Description of document:	Two (2) Federal Labor Relations Authority (FLRA) policy documents, 2017, 2014
Requested date:	22-January-2017
Released date:	21-February-2017
Posted date:	13-August-2018
Source of document:	FOIA Request Office of the Solicitor Federal Labor Relations Authority 1400 K Street, NW Washington, DC 20424 Telephone: (202) 218-7770 Fax: (202) 343-1007 Email: solmail@flra.gov

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

OFFICE OF THE SOLICITOR

VIA FIRST CLASS MAIL

February 21, 2017

This refers to the four requests under the Freedom of Information Act (FOIA) dated and received on January 22, 2017 in the Solicitor's Office of the Federal Labor Relations Authority (FLRA). Pursuant to § 2411.8 of the FLRA's regulations, 5 C.F.R § 2411.8, your request for information has been granted in part and denied in part. An explanation for each request follows below.

1. ***FLRA Administrative Instructions and Copy of the Listing of FLRA Administrative Instructions*, No. 17-FOIC-024**. You have requested a digital/electronic copy of the FLRA Administrative Instructions and a copy of the listing of FLRA Administrative Instructions. Your request is granted. Responsive documents are located on the enclosed CD-rom in a folder labeled 17-FOIC-024.

2. ***Most Recent Edition of the FLRA Authority Drafting Guide,* No. 17-FOIC-025.** You have requested a digital/electronic copy of the most recent edition of the FLRA Authority Drafting Guide. Your request is granted. The responsive document is located on the enclosed CD-rom in a folder labeled 17-FOIC-025.

3. ***FLRA OGC Case Law Outline* No. 17-FOIC-026.** You have requested a digital/electronic copy of the most recent edition of the FLRA OCG Case Law Outline or a public link where this document can be found. Your request is granted. The most recent edition of the caselaw outline is available on the FLRA's website at https://www.flra.gov/system/files/webfm/OGC/ULP%20Case%20Law%20Outline/ULP%20Case%20Law%20Outline%20PLmay21%202015%20sep22%202015.pdf.

4. **Main Page on the FLRA Intranet site related to Policy, Human Capital, and Performance Management, No. 17-FLRA-027**. You have requested a copy of the main page on the FLRA intranet site relating to Policy, Human Capital and Performance Management. Your request is denied. An examination of the FLRA's intranet site has not

disclosed any page specifically relating to Policy, Human Capital, and Performance Management that is responsive.

* * *

Pursuant to the FOIA Improvement Act of 2016, 5 U.S.C. § 552 (a)(6)(A)(i)(III), the decision of the undersigned with regards to your request may be appealed to the Chairman of the FLRA, Patrick Pizzella, within 90 days of the receipt of this response. If you would like to discuss this response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you can contact our FOIA Public Liaison for assistance at:

Federal Labor Relations Authority
Case Intake and Publication
1400 K Street, NW, 2nd Floor
Washington D.C. 20424
Phone: 202-218-7740
Email: csmith@flra.gov

If you have any questions, please also feel free to contact me at solmail@flra.gov.

Sincerely,

/s Fred Jacob
Solicitor
Federal Labor Relations Authority

OFFICE OF THE EXECUTIVE DIRECTOR WASHINGTON, D.C.

FLRA INSTRUCTIONS

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Federal Labor Relations Authority

Washington, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION

FLRA No. 6930

ACCEPTABLE TECHNOLOGY USE	Issue Date: May 10, 2013

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SECTION 1. GENERAL PROVISIONS.

1. Purpose. A well-protected Federal Labor Relations Authority (FLRA) network enables FLRA personnel to easily handle their increasing dependence on the Internet. The purpose of this Instruction is to outline the acceptable use of FLRA information-technology assets (e.g., laptops, hardware, software, mobile devices, computer systems, networks, data). These rules are in place to protect employees and the organization. Inappropriate use of FLRA information-technology assets exposes FLRA systems and personnel to risks including attacks, compromise of network systems and services, and potential legal issues.

2. Supplementation of Existing FLRA Policies. This Instruction is not intended to replace existing FLRA policies: it is intended to enhance and further define rules that each user must follow while accessing the FLRA network and using FLRA information-technology assets. This Instruction supplements FLRA Instruction Nos. 1741 – Blackberry Allocation and Use (January 15, 2010); 6910 – FLRA Electronic Mail (May 31, 2000); and 6920 – FLRA Internet Access (June 9, 2000).

3. Scope. This Instruction applies to all employees, contractors, consultants, temporary employees, and other workers supporting the FLRA. These individuals will be referred to collectively throughout this Instruction as "employees."

4. Authorities.

Computer Security Act of 1987, 40 U.S.C. § 759 note

Federal Information Security Management Act of 2002, 44 U.S.C. §§ 3501-3549

Office of Management and Budget (OMB) Circular A-123, *Internal Control Systems*

OMB Circular A-130, Appendix III, *Security of Federal Automated Information Systems*

5 C.F.R. Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*

National Institute of Standards and Technology, Computer Security Division (NIST, CSD), *Standards for Security Categorization of Federal Information and Information Systems*, Federal Information Processing Standards Publication 199

NIST, CSD, *Minimum Security Requirements for Federal Information and Information Systems*, Federal Information Processing Standards Publication 200

NIST, CSD, *Recommended Security Controls for Federal Information Systems and Organizations*, Special Publication 800-53

NIST, CSD, *Guide for the Security Certification and Accreditation of Federal Information Systems*, Special Publication 800-370.

SECTION 2. ACCESS TO THE FLRA NETWORK.

1. **General Restriction to Official Use.** With the exception of limited personal use or authorized communications that do not cause an adverse impact on the FLRA or its operations, access to the FLRA network is for official use only. There are four networks available for official use: the FLRA wired network (requiring a data-cable connection); the FLRA Headquarters (HQ) wireless (Wi-Fi) network (the *FLRA* Wi-Fi network); the FLRA HQ Guest Wi-Fi network (the *FLRA_Guest* Wi-Fi network); and the FLRA Regional Wi-Fi hotspots.

2. **Consequences of Unauthorized or Improper Use.** Unauthorized or improper use of FLRA information-technology systems or equipment could result in: the loss of use or limitations on use of the systems or equipment; disciplinary or adverse actions; criminal penalties; and employees being held financially liable for the cost of improper use. The consequences of an employee's unauthorized or improper use will be determined by FLRA management, which may take into consideration input from the FLRA's Chief Information Officer (CIO).

3. **User Minimum Security Rules and Requirements.** The following minimum security rules and requirements apply:

    a. All employees shall complete the required annual security-awareness training and provide proof of completion to the Information Resources Management Division (IRMD). Employees' training certificates will expire one year from the last date allowed for the annual training. Employees will be required to complete annual training upon receiving an annual notice from IRMD of the requirement. New employees shall complete the required annual training within ninety days after they begin work at the FLRA and shall take subsequent annual training on the same schedule as all other employees. Employees shall also participate in all FLRA-mandated security awareness training and certification programs. The content of such programs may include threat identification, physical security, acceptable-use policies, malicious-content and -logic identification, and non-standard threats such as social engineering. If an employee fails to meet any of the above training requirements, then an employee's account may be disabled until all requirements are satisfied by the employee.

    b. Only hardware and software authorized by the CIO or his/her designee may be used on FLRA systems, including the HQ Wi-Fi networks. Without prior CIO or his/her designee approval, individuals shall not install or use any personally owned hardware (including removable drives, cellphones, or tablet personal computers (PCs)), software, shareware, or public-domain software on FLRA-furnished equipment. An employee may not modify an FLRA-issued laptop (hardware or software) without prior CIO or his/her designee approval. But employees working in the six FLRA Regional Offices outside of Washington, D.C. may connect their personally owned devices to the FLRA's Regional Wi-Fi hotspots.

c. FLRA laptops and other equipment must not be connected to the wired FLRA network and an FLRA headquarters (HQ) Wi-Fi network at the same time because that will introduce significant risk to FLRA resources. Accessing the FLRA HQ Wi-Fi networks shall be done in the manner described in IRMD's *How To: Connecting to the FLRA and FLRA_Guest Wireless Networks at HQ*. Access to the HQ *FLRA_Guest* network is provided for official, FLRA-related use only. It is intended to provide FLRA guests (and, in rare instances, FLRA employees with an official, FLRA-related need), Internet access without connecting their personal information-technology equipment to the wired FLRA network, which could pose a significant security risk. The HQ *FLRA_Guest* Wi-Fi network will automatically disconnect users from the Wi-Fi network after fifteen minutes of inactivity. This automatic-disconnect setting cannot be overridden.

d. Employee remote access will be via virtual private network (VPN), Remote Desktop Protocol (RDP), or Outlook Web Access (OWA). Where VPN and RDP are used, unless specifically authorized by the CIO or his/her designee, only FLRA-owned hardware and software may be used. The assigned user is the only individual authorized to use the assigned equipment. When accessing FLRA email via OWA, the use of personal information-technology equipment is authorized.

e. Employees may not do anything to interfere with automatic virus scans of information uploaded or accessed from any system (i.e., network, server, or computer), diskette, attachment, compact disk, thumb/flash-storage device, or other storage media.

f. Employees shall not alter, change, configure, or use operating systems, programs, or information systems except as specifically authorized. This does not apply to modifications made by employees using their default user rights to customize the operations of existing IRMD-approved applications (e.g., Microsoft Office, Adobe Reader).

g. Except when specifically approved by the employee's supervisor, an employee may not use the FLRA's networks, equipment, or other resources in the pursuit of private commercial-business activities, profit-making ventures, or other income-producing activities, including the operation of a business or engagement in non-federal-employment activities.

h. Employees may not engage in personal use that a reasonable person might expect to cause congestion, delay, or disruption of service to any FLRA information system. For example, employees may not download or stream non-sanctioned video, sound, or other large file attachments that can degrade the performance of the network.

i. Only IRMD staff or other staff authorized by the CIO will perform maintenance of FLRA information-technology equipment.

j. Employees shall immediately report any suspicious output, files, shortcuts, or system problems to IRMD.

k. With exceptions noted elsewhere in this Instruction, the FLRA's information-technology assets are only for official, FLRA-related use.

l. The FLRA may monitor its information-technology assets (e.g., hardware, software, computer systems, networks, data) for various purposes, and information captured during monitoring may be used for possible adverse administrative, disciplinary, or criminal actions. The following uses of an FLRA information-technology asset are prohibited, unless they are performed for an official, FLRA-related purpose:

- The creation, downloading, viewing, storage, or copying of sexually explicit or sexually oriented materials.
- The creation, downloading, viewing, storage, or copying of materials related to gambling, weapons, terrorist activities, and illegal or prohibited activities.
- Listening to live radio streamed through an FLRA-wired or -wireless network for non-work-related purposes. But employees *are* permitted to access and listen to the following sites: (1) http://www.pandora.com; (2) http://www.iheart.com; (3) www.live365.com; and (4) www.sky.fm.
- Using FLRA systems as a staging ground or platform to gain unauthorized access to other systems.
- The unauthorized acquisition, use, reproduction, transmission, or distribution of computer software or other material protected by national and international copyright laws, trademarks, or other intellectual property rights.
- Peer-to-Peer (P2P) programs that allow participation in file-sharing or file-swapping activities. P2P software is frequently used for the illegal downloading of music and video files. It may also provide Internet phone connectivity or allow people to communicate from their PCs to a telephone. The following list provides examples of prohibited P2P software by category. This software is prohibited unless specifically approved to conduct official, FLRA-related business:

AOL Instant Messenger	BearShare	Bit Torrent
Edonkey	EMule	Gnutella
Kazaa	Limewire	MSN Messenger
Morpheus	Napster	PC Anywhere
Skype	Timbuktu	Windows Messenger
WinMX	Yahoo Messenger	

4. **FLRA-Issued or -Authorized Mobile Devices.** In accordance with FLRA Instruction No. 1741, employees to whom the FLRA provides mobile devices such as Blackberries and iPads (mobile users) are subject to the following:

a. Mobile users have a duty to exercise reasonable care in the use and transport of their FLRA-issued or -provided mobile devices.

b. Within thirty days after this Instruction takes effect, the CIO or his/her designee shall provide each mobile user with current information on the mobile-device service plan, including normal monthly services charges and activities that will trigger charges in excess of what the plan allows. The CIO or his/her designee shall promptly provide mobile users with any changes to the plan. Absent approval by the Executive Director, any excess charges shall be the responsibility of the mobile users.

c. Mobile users shall not send sensitive information via Short Message Service (SMS), text message, or Multimedia Messaging Service (MMS).

d. Mobile users shall not click on unofficial hyperlinks, executable files, or photographs received via SMS, text message, or MMS because this could allow viruses and malware to be downloaded to the device and the FLRA network, which could cause the loss of functionality to both.

5. **Noncompliance.** Employees are reminded that, with the exceptions set forth in this Instruction, FLRA-furnished-information-technology assets are for official, FLRA-related use. This Instruction also applies to the use of the FLRA HQ Wi-Fi networks. Noncompliance with this Instruction or other applicable information-technology security policies and regulations may result in immediate suspension of network access and privileges until compliance is confirmed by IRMD.

This Instruction is effective May 10, 2013.

Sarah Whittle Spooner
Executive Director

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3820.1

SUBJECT: ADMINISTRATIVE GRIEVANCE SYSTEM

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FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3820.1

August 1, 1986

SUBJECT: ADMINISTRATIVE GRIEVANCE SYSTEM

SECTION 1 - GENERAL PROVISIONS

1. PURPOSE. The purpose of this regulation is to establish policies and procedures for processing employee grievances.

2. SCOPE. This regulation applies to all employees of the Federal Labor Relations Authority (FLRA).

3. REFERENCES.

   5 U.S.C. § § 3592, 4507, 5384, 5336, 3592,

   5 C.F.R. § 335.102(f)(l);

   5 C.F.R., Part 430, Subpart A;

   5 C.F.R., Part 315, Subpart H; and

   Federal Personnel Manual, Chapter 711, Labor-Management Relations

4. DEFINITIONS.

   a. Employee. The term “employee” includes any employee or former employee of the FLRA for whom a remedy can be provided.

   b. Grievance. A grievance is a request by an employee, or group of employees acting as individuals, for personal

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OPI: OP

relief in a matter relating to employment conditions which are subject to the control of Agency management, including coercion, reprisal, or allegations of retaliation.

c. Grievance File. A grievance file contains all documents relative to the grievance, including statements of witnesses, official records, the hearing report, if one was held, statements made by the parties to the grievance, and the decision.

d. Personnel Relief. Personnel relief means, a specific remedy directly benefiting the grievant(s) and may not include a request for disciplinary or other action affecting another employee.

5. EXCLUSIONS. The following matters are excluded from consideration as grievances:

a. The content of published Agency regulations and policy;

b. A decision which is appealable to the Merit Systems Protection Board (MSPB), or subject to final administrative review under law or regulations of the Office of Personnel Management (OPM), or the Equal Employment Opportunity Commission (EEOC);

c. Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.

d. A preliminary warning notice of an action which, if effected, would be covered under the Grievance System or excluded from coverage by Paragraph 2 of this section;

e. A return of an employee from the Senior Executive Service (SES) to the General Schedule during the one-year probation period, or for less than successful performance under 5 U.S.C. § 3592;

f. An action which terminates a temporary promotion within a maximum of two years and returns the employee to the position from which the employee was temporarily promoted. An action which reassigns or

demotes an employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

g. An action which terminates a term position at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay under 5 C.F.R. § 335.102 (f)(l).

h. The substance of the critical elements and performance standards of an employee's position which have been established under the requirements of 5 C.F.R. Part 430, Subchapter A.

i. Granting of, or failure to grant, an employee performance award; adoption of, or failure to adopt, an employee suggestion; granting of, or failure to grant, an award of the rank of Meritorious or Distinguished executive under 5 U.S.C. § 4507.

j. Receipt of, or failure to receive, a performance award under 5 U.S.C. § 5384, or a quality salary increase under 5 U.S.C. § 5336.

k. A merit pay determination or a merit pay increase, or lack of a merit pay increase under the Merit Pay System, or a decision to grant, or not grant, cash or honorary recognition as described in FLRA regulation 3550.2, Performance Management Recognition System.

l. Termination under 5 C.F.R., Part 315, Subchapter 14, of a probationer for unsatisfactory performance.

m. A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactory complete the probationary period under 5 U.S.C. § 3321 (a)(2) and Title 5, Part 315, Subpart I.

n. A performance evaluation under 5 U.S.C., Chapter 43, Subchapter II.

o. Separation of an employee occupying a competitive position under a temporary appointment with a definite time limitation;

p. Separation of an excepted service employee during their trial period.

q. A grievance by a bargaining unit employee who has also elected to file the grievance through the negotiated grievance procedures.

r. A general increase or merit increase, or the lack of a general increase or merit increase, under the Performance Management Recognition System, or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C., Chapter 54 and 5 CFR, Part 540.

6. POLICY. It is Agency policy to treat all employees in a fair manner. This regulation provides informal and formal procedures for administrative grievances. Grievants may seek assistance from the Office of Personnel, EEO and Security.

7. ENTITLEMENT TO REPRESENTATION.

a. Choice of Representation. Employees have the right to select a representative to aid them in the grievance procedure. Written notice of the representative's name, or any substitutions, must be send to the Director of Personnel.

The Executive Director for Authority employees, the General Counsel for Office of General Counsel employees, and the Chairman, Federal Service Impasses Panel (FSIP), for FSIP employees (hereafter referred to as management or deciding officials) has the right to reject a request for a representative if that person's position presents a conflict of interest or an unreasonable expense to the Government. All rejections must be explained to the grievant in writing.

8. ACCESS TO AGENCY RECORDS. A grievant is entitled to review their Official Personnel Folder (OPF) and any relevant agency records not exempt from disclosure or

required to be kept confidential in the public interest. A grievant may, in the presence of an FLRA official, make copies of relevant agency records. FLRA officials must, upon the request of a grievant, or representative, make available for review nonexempt agency records relevant to the grievance. Disputes as to the relevancy of agency records, prior to the referral of a grievance to a factfinder, will be resolved by the Solicitor, whose decision is final.

9. OFFICIAL TIME FOR PRESENTATION OF GRIEVANCES. Employees and their representatives must be given a reasonable amount of official time to prepare and present a grievance, if they are in an active duty status.

SECTION 2 - INFORMAL AND FORMAL GRIEVANCE PROCEDURES

1. GENERAL. The grievance system consists of two steps, informal and formal. The informal procedure must be followed before a formal grievance can be accepted.

2. INFORMAL PROCEDURE.
This procedure provides an opportunity to resolve a grievance without formality.

   a. Initiation of Grievance with First-Level Supervisor. An employee must initiate a grievance, orally or in writing, with their supervisor within ten (10) calender days of the incident complained of, or within ten (10) calender days after becoming aware of the incident. An employee may present a grievance concerning a continuing condition or practice at any time. The supervisor must respond within seven (7) calender days. The response must be in writing only if the grievance is submitted in writing. The written response must contain: (1) a statement of the issues of the grievance; (2) the consideration accorded to each issue; (3) the conclusions and decisions reached and the reasons why; and (4) a statement regarding the completion or incompletion of the informal procedure. A copy of the response will be provided to the grievant's representative, if one has been chosen.

   b. Consideration by Second-Level Supervisor. If the matter is not resolved at the first level of

supervision the employee may submit a written grievance to the next higher level of supervision (if one exists). The second-level supervisor must provide a written response, containing items 1 through 4 above, to the grievant within seven (7) calendar days of receipt of the grievance.

3. FORMAL PROCEDURE.

a. Presentation of Grievance.

(1) If grievants are dissatisfied with the second-level response, they have the right to present the grievance to the appropriate deciding official. These grievances must be sent through the Director of Personnel. A formal grievance will be accepted only if:

(a) The employee has completed the informal process;

(b) The employee presents the written grievance to the Director of Personnel within ten (10) calender days after receipt of the second-level response; and

(c) The grievance contains sufficient detail to identify clearly the basis for the grievance, and it must specify the personal relief requested by the employee. All grievances must be signed by the employee or their representative.

(2) Management may return a grievance for completion of the informal procedure or additional information.

b. Rejection of Grievance. Management may reject a grievance for any appropriate reason, including the following:

(1) Timeliness;

(2) Issues are excluded from coverage under the Grievance System (see Sec. 1, para. 5); or

(3) Relief requested is not personal to the employee. (E.g., a request for disciplinary

action against an FLRA official or another employee would not be a request for relief personal to the grievant.) A written rejection notice must contain complete explanation.

c. Resolution or Referral of Grievance to Factfinder. If a grievance is not resolved within fourteen (14) calender days, it must be referred to a factfinder. Management must appoint a factfinder within seven (7) calender days following the preceding fourteen-day period. The factfinder may not be selected from an organization under the jurisdiction of the deciding official.

SECTION 3 - THE HEARING

1. PURPOSE. To give the grievant an opportunity to present evidence on matters in dispute to an impartial party for consideration and a finding based on the facts.

2. TRAVEL AND PER DIEM. Hearings will be conducted at the grievant's work site, when possible. If the hearing location requires travel, the Authority will pay for the grievant's commercial transportation and per diem expenses. Grievants must pay for travel expenses incurred by their representative.

3. FLRA'S RESPONSIBILITIES. The Authority must obtain a suitable hearing room and a waiting room and arrange for a verbatim record of hearing, if required by the factfinder.

4. ATTENDANCE AT HEARING.

a. Hearings are limited to persons determined by the factfinder to have a direct connection with the grievance. The factfinder may exclude any person from the hearing for conduct that obstructs the orderly process of the hearing. Hearings are not open to the public or press.

b. Generally, only the following persons are permitted to be present at a hearing:

(1) The factfinder assigned to the case;

(2) The grievant and representative, if any;

(3) FLRA representative(s);

(4) The hearing stenographer or technician operating the recording equipment; and

(5) One witness at the time when presenting testimony, unless in the factfinder's judgment there is reason to have two or more witnesses present at the same time. The factfinder may have all witnesses present during the factfinder's opening statement.

5. RIGHTS OF GRIEVANTS AND FLRA REPRESENTATIVES.

a. Grievants.

(1) Grievants and their representatives have a right to be present throughout the hearing. At the factfinder's discretion, the grievant's representative may be assisted at a hearing by another person or persons, but only the individual designated by the grievant as representative will be recognized as such.

(2) Grievants have the right to testify in their own behalf without the fear of reprisal.

(3) Grievants have the right to submit evidence that will aid in resolving the grievance.

(4) Grievants have a right to cross-examine Agency witnesses and respond to other evidence presented by the Agency at the hearing.

(5) Grievants have a right to inspect their grievance file and all exhibits introduced at the hearing before they are made a part of the record. Grievants must be furnished a copy of any exhibit which the Agency introduces at the hearing.

(6) Grievants have a right to review and comment on the entire grievance file, including the summary or transcript of the hearing.

(7) Grievants have a right to a copy of the hearing transcript or summary, the factfinder's report of findings and recommendations, and the decision of the deciding official.

(8) Grievants must give the factfinder a list of witnesses and a brief summary of their expected testimony before the hearing.

(9) Grievants must comply with the hearing procedures and proceed with the case in a timely manner.

(10) Grievants must confine their presentation to matters relevant to the issues in the case.

b. FLRA Representative.

(1) FLRA representatives have the right to be present throughout the hearing. At the factfinder's discretion, FLRA representative may be assisted at the hearing by an advisor or advisors, but only the FLRA's designated representative will be recognized as representing the FLRA.

(2) FLRA representatives have the right to submit evidence and must submit any information that will aid in resolving the grievance.

(3) FLRA representatives have the right to cross-examine a grievant's witnesses and respond to other evidence presented by grievants or their representatives.

(4) FLRA representatives have the right to a copy of the grievance file, the hearing transcript or summary, the factfinder's report of findings and recommendations, and the decision of the deciding official.

(5) FLRA representatives, must give the factfinder a list of all witnesses and a brief summary of their expected testimony before the hearing.

(6) FLRA representatives must comply with the hearing procedures and proceed in a timely manner.

(7) FLRA representatives must confine their presentation to matters relevant to the issues in the case.

6. FACTFINDER'S PREPARATION FOR THE HEARING.

a. Prehearing Review.

(1) The factfinder should review the grievance file material. The factfinder should attempt to isolate the issues, review evidence relating to each issue, and eliminate issues which are apparently undisputed.

(2) If the factfinder discovers that pertinent documents have been omitted or that evidence is unclear, the factfinder should request submission of the missing documents or clarification of the evidence.

(3) If the factfinder is not engaged in full-time grievance investigating, the factfinder should review laws, regulations and instructions of OPM and the FLRA pertinent to the grievance.

b. Notice to Parties.

(1) The factfinder should inform the grievant and FLRA representatives of a time and place where they may review the grievance file. A telephone call must be confirmed in writing.

(2) Witnesses should be limited to those persons having first-hand knowledge of issues in dispute. The factfinder may limit the number of witnesses to avoid repetitious testimony. If a request for a witness is denied, the requesting party must be notified in writing of the reasons for the denial. A copy of the denial notice must be included in the grievance file.

(3) The factfinder should send a copy of the approved witness list to the grievant and to the FLRA representative as soon as possible.

c. Prehearing Conference.

(1) The factfinder may wish to meet with the grievant, the grievant's representative, and the Agency representative before the hearing to discuss complex issues. Any agreements reached during the prehearing conference must be reduced to writing and made part of the record.

(2) The factfinder may:

(a) Explain the procedures which will be followed in the hearing;

(b) Outline the scope of the issues;

(c) Obtain stipulations on matters where there is no disagreement.

(d) Obtain a commitment from the Agency representative for the appearance of employee witnesses.

(e) Obtain documentary evidence to reduce the number of exhibits at the hearing;

(f) Establish the time, date and place for the hearing.

7. RECORD OF HEARING. The factfinder, must determine whether the hearing will be reported by verbatim transcript or written summary. When the hearing is reported verbatim, the method of recording will be determined by the FLRA. When the hearing is transcribed, an original (for the grievance file) and two copies (one for each party) must be made. When the hearing is not reported verbatim, the factfinder must prepare a suitable summary of the pertinent testimony. The parties will indicate their agreement by signing the report. If they do not agree with it, they must submit written exceptions which, together with the summary, will be made part of the hearing record. The factfinder must include in the

hearing record all documents submitted and accepted. The factfinder must include the hearing record in the grievance file.

8. OFF-THE-RECORD DISCUSSIONS. If, during the hearing, any party or witness asks to speak off the record, they may be permitted to do so. However, the record must show that the proceedings went off the record.

9. HEARING PROCEDURES.

   a. Although a hearing must be conducted in an orderly and dignified manner, neither the Administrative Procedure Act nor judicial rules of evidence on procedure apply. While certain rules of procedure are necessary to expedite the hearing, the general tone of the proceedings should not be intimidating. A grievance hearing is an inquiry, not a trial.

   b. Procedures established by the factfinder should be impartial and should be used to develop fully all the evidence surrounding the issues in dispute. The factfinder should make certain that each party has an opportunity to present their case.

10. EVIDENCE IN GENERAL.

   a. The factfinder will decide all questions on the admissibility of evidence.

   b. Evidence should be relevant, material, and not unduly repetitious.

   c. The factfinder must not admit or consider classified information at any stage of the Agency Grievance procedure. If the evidence is declassified by competent authority, it may be admitted and considered.

11. DOCUMENTARY EVIDENCE.

   a. Each party may present as documentary evidence affidavits, exhibits, and official records. The factfinder may admit any documentary evidence which is relevant to the issues and is not classified. The factfinder may reserve judgment on admissibility

until all evidence is in and an analysis has been made of the findings. If the factfinder rules not to admit evidence, the record must show the factfinder's reasons for refusing to admit it. Any documentary evidence accepted by the factfinder must be marked as an exhibit for the party presenting the evidence and included in the hearing record.

b. When documentary evidence is introduced, the factfinder should afford the other party an opportunity to review it and to place on the record any objections.

12. WITNESSES.

a. Arrangements for Witnesses. Arrangements for witnesses who are not employees of the FLRA must be made by the requesting party. If, in the opinion of the factfinder, an employee of another government agency is needed as a witness, the FLRA must pay their expenses to attend the hearing.

b. Production of, and Safeguards for, Witnesses. The FLRA must accede to the factfinder's request for employee witnesses, except in unusual circumstances. If it is not practical to comply with the request, the agency representative must notify the factfinder in writing and give the reasons for not producing the witness(es). The factfinder must determine whether the presence of the witness(es), is essential for a full and fair hearing and, if the factfinder so determines, may postpone the hearing until they are available. FLRA employees are guaranteed freedom from restraint, interference, coercion, discrimination, or reprisal as a result of their testimony.

SECTION 4 - FACTFINDER'S REPORT.

1. The factfinder must submit, within 28 calendar days, the grievance file containing the hearing transcript, or summary of testimony, and the report of findings and recommendations to the deciding official. An identical copy must be sent to the grievant, including the date on which the report was forwarded to the deciding official.

SECTION 5 - DECISION OF THE FLRA. Within fourteen calendar days of receipt of the factfinder's report, management must issue a written decision to the grievant. Management may adopt, reject or modify the recommended decision. If the decision is to reject or modify, the letter transmitting the FLRA decision must state the specific reasons for rejection or modification. The decision of the FLRA is final.

SECTION 6 - TIME LIMITED FOR PROCESSING GRIEVANCES. Each grievance must be acted upon promptly, so that it may be resolved within 100 calendar days. Management, may, at their discretion, extend the time limit. The appropriate official must send written notification to the parties with respect to a request for extension of time.

SECTION 7 - TERMINATION OF GRIEVANCES. The deciding official must terminate action on a grievance:

1. At the grievant's written request;

2. Upon termination of the grievant's employment, unless relief can be granted after the termination;

3. Upon death of the grievant, unless the grievance involves a question of pay or compensation; or

4. For failure to prosecute if the grievant does not furnish required information and does not proceed with advancement.

SECTION 8 - DISPOSITION OF GRIEVANCE FILE. The grievance file, including the hearing record, the factfinder's report, and a copy of the decision letter, shall be forwarded to the Office of Personnel. The Office of Personnel will serve as the Agency's official custodian for all such files. Grievance files will be retained for a period of 36 months from the date of the final decision.

This regulation is effective August 1, 1986.

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Jacqueline R. Bradley
Executive Director

ATTACHMENT 1

SUMMARY OF STAGES AND TIME LIMITS FOR
FLRA GRIEVANCE SYSTEM

INFORMAL STAGE	
Employee initiates grievance with immediate supervisor.	Within ten (10) calendar days of incident complained of, or within ten (10) calendar days after grievant becomes aware of the incident (10-2.b.).
Immediate supervisor gives response to employee.	Within seven (7) calendar days after receipt of grievance (10-2.b.).
If not resolved, grievance submitted (in writing) to second-level supervisor.	Within six (6) calendar days after receipt of grievant of immediate supervisor's response (10-2.c.)
Second-level supervisor gives response.	Within seven (7) calendar days after receipt of grievance (10-2.c.).
	TOTAL NO. OF DAYS: 20 for processing informal grievance (after initiation).
FORMAL STAGE	
Grievance submitted in writing to Executive Director/ Administrator, General Counsel, or Chairman, FSIP, (or another Panel Member), as appropriate.	Within ten (10) calendar days after receipt by grievant of second-level informal response (10-3.a.(1)(b)).
Executive Director/ Administrator, General Counsel, or Chairman, FSIP, (or another Panel Member) attempts resolution.	Within fourteen (14) calendar days of receipt of formal grievance (10-3.c.)
TIME FRAME	

ATTACHMENT 1
(Continued)

If not resolved, case is referred by Executive Director/Administrator, General Counsel, or Chairman, FSIP, (or another Panel Member), as appropriate, to a factfinder.	Within seven (7) additional calendar days (beyond the fourteen (14) calendar days allowed for attempt at resolution) (10-3.c.).
Factfinder begins inquiry.	Within seven (7) calendar days after assignment of case (11-1., 12).
Factfinder submits final report to Executive Director/Administrator, General Counsel, or Chairman, FSIP, (or another Panel Member), as appropriate.	Within twenty-eight (28) calendar days after initiation of inquiry (11-1., 12-2.).
Decision by Executive Director/Administrator, General Counsel, or Chairman, FSIP, (or another Panel Member), as appropriate.	Within fourteen (14) calendar days after receipt of factfinder's report (Section 15).
	TOTAL NO. OF DAYS: 80 (for processing formal grievance)

TOTAL NO. OF CALENDER DAYS FOR PROCESSING GRIEVANCE (INFORMAL THROUGH FORMAL): 100

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR/ADMINISTRATOR
WASHINGTON, D.C.

Regulations

FLRA 2520.1B

July 16, 1984

SUBJECT: ADMINISTRATIVE CONTROL OF FUNDS

1. Purpose - The Civil Service Miscellaneous Amendments Act of 1983 (P.L. 98-224) designated the Chairman of the Federal Labor Relations Authority as, "chief executive and administrative officer" of the Agency. Section 3679 of the Revised Statutes, as amended, and Office of Management and Budget (OMB) Circular A-34 require the head of each executive agency to prescribe, by regulation, a system of administrative control of funds. The Chairman has established a system of financial control to meet this requirement. The purpose of this system is to (a) restrict obligations and expenditures against each appropriation or fund to the amount of appropriations, apportionments or reapportionments; (b) fix responsibility for over-obligations and over-expenditures of appropriations, apportionments, allotments and statutory limitations, subject to the Anti-deficiency Act, as well as violations of nonstatutory restrictions and requirements; and (c) require managers to adhere to specified allowance levels to control discretionary expenditures.

2. Authority - The FLRA's system for administrative control of funds has been established under authority of and consistent with the requirements of:

   a. Section 3679 of the Revised Statues (31 U.S.C. 1514) (The Anti-deficiency Act).

   b. Budget and Accounting Act of 1921, as amended (31 U.S.C. 1104).

   c. Section 1311 of the Supplemental Appropriations Act of 1955 (31 U.S.C. 1501).

   d. Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1102 and 2 U.S.C. 681-688).

   e. OMB Circular No. A-34 "Instructions on Budget Execution", OMB Bulletin 75-15 and related OMB guidelines.

   f. Civil Service Miscellaneous Amendments Act of 1983 (P.L. 98-224).

3. Scope - The FLRA's system applies to all funds or appropriations under control of the agency.

DISTRIBUTION: Chairman, Members, Cost Center Managers

OPI: ED/A (COMP)

4. Definitions - Terms used in these regulations have the same meanings as in OMB Circular A-34. In addition, the following special terms are defined:

   a. Cost Center - The organizational unit, under the cost center manager, consisting of people, equipment and other resources, established as such to pinpoint responsibility for costs, results, and allowances.

   b. Allotment - Authority granted by Congress to the Chairman to incur obligations within a specified amount. Such allotments are subject to the provisions of Section 3679 of the Anti-deficiency Act.

   c. Allowance - Specific funding levels for various discretionary categories of expenditures such as training and travel issued to managers. It is the responsibility of the manager to remain within the levels prescribed by allowances or submit a request to, and gain approval from, the Comptroller for a modification of allowances in advance of over-committing funds.

   d. Obligations and Disbursements - Obligations are defined as amounts of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payments during the same or a future period. Such amounts will include disbursements for which obligations had not been previously recorded and will reflect adjustments for differences between obligations previously recorded and actual disbursements to liquidate those obligations. Section 1311(a) of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200) sets forth specific requirements for documenting, recording and reporting obligations. The recording of obligations must never be deferred for lack of funds and must be recorded at the earliest possible time.

5. Delegations and Responsibilities - The Chairman is responsible for approving the agency's financial plan and revisions thereto, within amounts apportioned by OMB after receiving the cost center managers' budget proposals. Since it is not possible for the Chairman to exercise fund control personally, responsibility for apportionments, allowances, the agency financial plan, and funds control have been delegated as follows. The Comptroller is delegated authority from the Chairman through the Executive Director/Administrator to request and subdivide apportionments and allowances within amounts appropriated, and provide managers with allowances as approved by the Chairman. The following managers have responsibility for controlling, within prescribed amounts, obligations and/or allowances issued to them.

a. Offices	Responsibility
Chairman	Controls agency-wide obligation levels within approved allotment and apportionments.
General Counsel	Controls obligations within approved allowances for: - Immediate Office of the General Counsel - Office of Appeals - Regional Offices
Executive Director/Administrator	Controls obligations within approved allowances for: - Office of the Chairman - Office of the Members - Office of the Executive Director/Administrator
Chief Counsel	Controls expenditures within approved allowances for the Office of the Chief Counsel.
Solicitor	Controls expenditures within approved allowances for the Office of the Solicitor.
Comptroller	Controls expenditures within approved allowances for the Office of the Comptroller.
Director of Personnel	Controls expenditures within approved allowances for the Office of Personnel.
Director of Case Management	Controls expenditures within approved allowances for the Office of Case Management.
Executive Director, FSIP	Controls obligations within approved allowances for the Federal Service Impasses Panel.
Chief, Administrative Law Judges	Controls obligations within approved allowances for the Office of Administrative Law Judges.

b. Annual Financial Plan - Subject to final approval by the Chairman, the Office of the Comptroller will develop, monitor and revise, as necessary, the annual agency financial plan.

c. Apportionments and Reapportionments (SF 132) - The Office of the Comptroller submits requests for apportionment and reapportionment to OMB. Requests are supported by a financial plan acceptable to OMB and approved by the Chairman.

d. Reports on Budget Execution (SF 133) - The Office of the Comptroller submits these reports to OMB, together with appropriate supporting detail, based on the agency financial plan. Reprogramming of funds within the agency to meet program requirements will result in a change in the financial plan and must be approved by the Chairman. Changes to the financial plan that affect an appropriation, apportionment, statutory limitation or matters of OMB or Congressional policy guidance, must be approved by OMB or the Congress, as appropriate.

e. Allotments - Internal control over obligations or expenditures will be exercised by the Office of the Comptroller through allotments and allowances. Under the Chairman's direction the Office of the Comptroller will issue an allotment for the agency. The Office of the Comptroller will provide monthly reports of obligations to assist in the monitoring of obligations. Adjustments cannot be made after an allotment has been exceeded and in such a case, a violation of Section 3679 has occurred and is reportable. The allotment will consist of a formal document containing the following information:

(1) Amount available.

(2) Time period of availability.

(3) All Congressional and legal restrictions on the obligation and/or disbursement of the alloted funds.

(4) Name of the individual manager with prime responsibility to insure that the terms of the allotment are not exceeded.

(5) Amount of estimated reimbursements contained in the allotment (to be separately controlled), and the conditions to be met before obligations may be incurred against these estimates.

f. Allowances - Cost center managers will be issued allowances for specific discretionary items of expenditures. These levels will be determined by considering the requirements of the cost center managers in conjunction with the status of the agency's overall budget. Examples of the types of expenditures for which allowances could be issued include travel, incentive awards, special service contracts, and equipment. Cost center managers are responsible for monitoring obligations and expenditures to ensure that allowances are not exceeded. The Office of the Comptroller will provide information on a monthly basis to cost center managers updating the status of obligations and expenditures against the allowance levels. Requests for adjustments to allowances will be made by cost center managers prior to exceeding the approved levels. Revised allowance levels will be approved in exceptional cases subject to availability of funds. Cost center managers will be required in their requests to document the reasons for exceeding their allowances. Allowance levels reflect the entire agency's approved operating budget. Deviations in excess of allowances will therefore affect the status of funds for the agency's entire appropriations. Allowances will usually reflect the following information:

(1) Time period of availability.

(2) Name of the cost center and the manager responsible for ensuring that expenditures are properly managed so that allowances are not exceeded.

(3) Amount available by object or sub-object class.

(4) Assumptions made by the Office of the Comptroller concerning funds to be expended, i.e., a travel allowance may provide a sum of money for a workshop or conference. If the workshop or conference is not held, the Office of the Comptroller should be advised so that the travel allowance can be adjusted.

g. Obligations and Disbursements - The Office of the Comptroller is responsible for recording obligations and disbursements in the accounts and performing a year end review of all obligations to assure their validity.

6. Accounting System - The administrative fund control system will be fully integrated with FLRA's cost based accounting system. Obligations and disbursements are entered into the accounting system by the Office of the Comptroller. The system requires that cost center managers submit appropriate information to the Office of the Comptroller accurately, completely and promptly. The accounting reports maintained by the Office of the Comptroller and distributed to agency officials will contain:

-- the cumulative amount allowed during the fiscal year.

-- the cumulative obligations during the fiscal year.

-- the unobligated balance.

-- restrictions contained in appropriation acts or their statutes, along with total obligations incurred against such restrictions to date, and

-- the status of estimated reimbursements, including amounts estimated, orders received to date, and amounts earned and collected to date.

Cost center managers will receive monthly accounting reports which will be used to track the status of allowances. They will be responsible for determining fund availability on a current and on-going basis using these reports. Each cost center manager will be responsible for monitoring the level of all obligations as they are incurred for specific allowances. Each cost center manager will be responsible for the reconciliation of the adjusted unobligated fund balance to the report when received.

7. Reimbursements - Special attention is to be given to allotments which include anticipated revenues/reimbursements. Where reimbursements are expected from other agencies or from outside sources, there must be documentary evidence of a firm agreement authorizing specific performance and stating the approximate amount.

8. Violations - Reportable violations of Section 3679 of the Revised Statutes include:

a. Obligations or disbursements in excess of the amount available within an appropriation, or in excess of a statutory limitation.

b. Obligations or disbursements in excess of the amount available within an apportionment or reapportionment. Also making distributions in excess of the amount of apportionment.

c. Obligations or disbursements in excess of the amount available within an allotment.

d. Obligation or disbursement in excess of the amount available, as described in subsection (h) of Section 3679 of the Anti-deficiency Act.

e. Obligation or contract for payment of money for any purpose in advance of appropriations made for such purpose, unless specifically authorized by law.

f. Acceptance of voluntary service except as provided in PL 95-434, the Civil Service Reform Act of 1978 (5 U.S.C. 3111).

g. Employment of personal service in excess of that authorized by law.

9. Reporting Violations - The Office of the Comptroller will carefully monitor the automated reports of status of funds in order to detect any violations. In the case of an apparent violation, the Comptroller shall verify the facts and immediately submit an internal report to the Chairman.

The report will contain at a minimum:

a. The title of the account and the amount and date of each violation.

b. The name of the individual responsible for the violation.

c. All pertinent facts of the violation.

d. A statement regarding the adequacy of the system of administrative control of funds.

Any employee who has knowledge of a violation or suspected violation shall be responsible for informing the Comptroller as the action provided herein may be initiated. When a statutory violation occurs, the Chairman shall immediately report to the President, through the Director, OMB, and to Congress. The report to the President will be in the form of a letter (original and three copies) to the President, forwarded through the Director of OMB. The opening sentences of the letter will identify it as "...a report on a violation of Section 3679 of the Revised Statutes, as amended." The letter will set forth the following data, preferably in the sequence outlined:

a. The title and symbol (including the fiscal year) of the appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred;

b. The name and position of the officer(s) or employee(s) responsible for the violation;

c. All the pertinent facts of the violation, including the type of violation (e.g., overobligation of apportionment, or over-expenditure of an appropriation), the primary reason or cause, and any statement of the responsible officer(s) or employee(s) with respect to any circumstances believed to be extenuating.

d. A statement of the administrative discipline imposed and any further steps taken with respect to the officer(s) or employee(s), or an explanation as to why no disciplinary action is considered necessary;

e. A statement of any additional action taken by, or at the direction of the Chairman, including any new safeguards to prevent recurrence of the same type of violation;

f. A statement regarding the adequacy of the system of administrative control prescribed by the Chairman and reviewed by OMB. (If changes in the regulations are needed, in the judgment of the Chairman, proposals will be submitted as provided in section 31 of OMB Circular A-34); and

g. If another agency is concerned, a statement concerning the steps taken to coordinate the report with the other agency.

The report to the Congress will be in the form of identical reports to the presiding officer of each House. One copy of the report to the Congress will be submitted to OMB with the report to the President, unless the reports to the Congress and the President are substantially identical. In such a case, a statement that the reports are substantially identical should be included in the report to the President.

10. Penalties - The Anti-deficiency Act provides that any officer or employee responsible for violation of the Act or of this regulation may be subject to administrative discipline including suspension or removal and may also be subject to fine and imprisonment.

11. Deferrals and Rescission Proposals - Available budgetary resources may be withheld from obligation temporarily through the apportionment process with the intent of apportioning them for later use, before they lapse. All funds deferred through the apportionment process, as well as apportioned funds provided for a specific purpose or project that are being obligated at a pace slower than intended by the Congress, must be reported to Congress by the President in special messages. Either House of Congress may overturn a deferral at any time by passing an impoundment resolution disapproving the deferral. All deferred amounts must be released in time to be used prudently before the account expires. If a determination is made that such amounts should not be used or that funds are not required to carry out the full objectives or scope of programs for which they are provided, a rescission will be proposed by the President prior to the beginning of the fourth fiscal quarter. Budget authority may also be proposed for recission for fiscal policy or other reasons. Generally, amounts proposed for recission will be withheld during the time the proposals are being considered by Congress. This may be accomplished through OMB apportionment action or through agency withholding action.

All funds proposed for rescission, including those withheld, must be reported to Congress in special messages. Affirmative action in the form of an enacted law must be completed to rescind funds. If both Houses have not completed action on a rescission proposed by the President within 45 calendar days of continuous session, any funds being withheld must be made available for obligation.

In situations where funds must be released because of Congressional inaction on proposed rescissions, apportionment requests reflecting the release of the affected funds must be submitted to OMB before the end of the prescribed 45-day period. Likewise, when Congress takes positive action to disapprove a deferral, a reapportionment form, reflecting the release of the amounts previously deferred, will be submitted to OMB not later than the day following passage of the resolution.

12. Implementation and Effective Date - Administrative procedures require the Comptroller to review the fund control regulations in light of (1) reported violations, (2) change in organizational structure, (3) change in operating procedures, or (4) changes in statutory requirements, and to recommend any necessary changes through the Executive Director/Administrator to the Chairman, and submit revised regulations to OMB for approval.

The provisions of the this Second Revision are effective July 16, 1984 and replace the version dated May 1, 1984, which is hereby rescinded.

Jan K. Bohren
Executive Director/Administrator

FEDERAL LABOR RELATIONS AUTHORITY **INSTRUCTIONS**
OFFICE OF THE EXECUTIVE DIRECTOR **FLRA No. 3302, 12/27/97**
WASHINGTON, DC **Rev 3/11/99**

SUBJECT: Attorney Recruitment and In-Service Placement

Table of Contents

ATTORNEY RECRUITMENT AND IN-SERVICE PLACEMENT

PART I. GENERAL

Chapter 1. General Information

1. **Purpose**. The purpose of this Instruction is to prescribe the Federal Labor Relations Authority's (FLRA or Agency) policy and procedures for filling all General Schedule attorney and law clerk trainee positions in the Agency, through both external recruitment and in-service placement.

2. **Cancellation**. This Instruction supersedes and cancels FLRA Instruction 3330.2, Attorney Recruitment and In-Service Placement, dated June 27, 1983.

3. **Scope**. This Instruction applies to all FLRA Schedule A attorney and law clerk trainee positions in General Schedule grades -09 through -15. Except as provided herein, these procedures do not apply to the following actions:

   a. Career ladder promotions;

   b. Appointments of former employees entitled to priority reemployment benefits under 5 CFR 302.303;

   c. Reappointments of current or former permanent employees who are preference eligibles under 5 CFR 302.402;

   d. Appointments of persons entitled to priority consideration;

   e. Schedule C appointments;

   f. Temporary promotions or details to a higher grade position for 120 days or less;

   g. Repromotions, reappointments, transfers or reassignments of individuals to a previously held grade, except for persons who were demoted or removed for reasons relating to poor performance or misconduct;

   h. Appointments of 30 percent or more compensable veterans; Handicap Appointments; or other special employment program appointments;

i. Promotions as a result of a reclassification based upon additional duties and responsibilities, when the incumbent continues to perform the same basic functions of the former position so that the duties of the former position are absorbed into the new position;

j. Promotions resulting from the upgrade of a position based upon issuance of a new classification standard or the correction of an initial classification error; and

k. Direct hires of graduates from accredited law schools who have a grade point average of 3.45 or better on a 4 point scale.

4. **References.**

a. Title 5 United States Code (U.S.C.), Part 23, Merit System Principles;

b. 5 Code of Federal Regulations (CFR), Section 213.3102(d) and (e), Excepted Service;

c. 5 CFR, Part 330, Recruitment, Selection, and Placement (General);

d. 5 CFR, Part 351, Reduction-in-Force; and

e. FLRA Instruction No. 3352, Interagency and Agency Career Transition Assistance Plan (CTAP).

5. **Definitions.**

a. Applicant Supply File. A pool of applicants who apply for general employment consideration rather than in response to a specific vacancy announcement.

b. Area of Consideration. The geographical or organizational area established for recruitment that is expected to produce an appropriate number and mix of high quality candidates.

c. Best Qualified Candidates. Those applicants who, because they score the highest when rated against the crediting plan and ranked among other qualified candidates, are referred to the supervisor for selection.

d. Career Ladder. The established entry-level to the journey-level of a position.

e. Career Ladder Promotion. Non-competitive promotion up to the established journey-

level of the position for which the employee initially competed.

f. Career Transition Assistance Program (CTAP). The FLRA's program to assist its displaced and surplus employees find other employment in the Agency, in other government agencies, or in the private sector.

g. Change to Lower Grade. A voluntary or involuntary reduction in grade.

h. Crediting Plan. The description of the criteria used to rate and rank applicants against the knowledge, skills, and abilities (KSAs) identified on the vacancy announcement for the position being filled.

i. Detail. A temporary assignment to a new set of duties or a different position for a limited and specified period of time.

j. Eligible Candidates. Those who apply for a job and who meet established qualification requirements for the position (including selective placement factors) and other applicable statutory or regulatory provisions.

k. Excepted Service. Positions in the executive branch of the Federal Government that are excepted from the competitive service by or pursuant to statute, the President, or the Office of Personnel Management. Attorneys and Law Clerk Trainees are excepted service positions.

l. Full Performance Level. The established target, or journey-level, grade of the position that was announced with the original recruitment action.

m. Noncompetitive Eligibles. Qualified applicants who are in special situations described herein that exempt them from having to compete under competitive recruitment procedures set forth in this Instruction.

n. Promotion. Change of an employee's grade to a higher grade level within the same classification system or to a position with a higher rate of basic pay in a different classification system and pay schedule.

o. Reassignment. The movement of an employee from one position to another without promotion or change to lower grade.

p. Reemployment Priority List. A list of former FLRA employees that is maintained in the Human Resources Division (HRD) and used to give re-employment consideration for excepted service vacancies to former excepted service employees

who were separated by reduction-in-force, or are fully recovered from a compensable injury after more than one year.

q. Temporary Promotion. A promotion that is time-limited.

r. Tenure. An employment status. An initial excepted service appointment is served as Tenure II. After completing one to two years of service (explained in Trial Period, below), employees are converted to Tenure I. Tenure group defines employee due process rights if adverse actions are proposed and employee retention standing in a Reduction-in-Force (RIF).

s. Trial Period. A one-year period after an initial appointment for preference eligibles, and a two-year period for non-preference eligible excepted service employees -- a period that supervisors use to assess the employee for suitability for Federal service and the ability to perform the duties for which the employee was hired.

6. **Policy.**

The FLRA will:

a. Ensure that all Agency selections are made based solely on merit and work-related criteria;

b. Inform employees of positions by posting such positions through vacancy announcements, e-mail, or other appropriate notice;

c. Ensure that selecting supervisors are aware of and consider veteran's preference entitlement in making selections;

d. Give appropriate consideration to current or previous FLRA excepted service employees who are entitled to priority consideration or selection; and

e. Fill positions consistent with the Agency's Federal Equal Opportunity Recruitment Program goals.

7. **Responsibilities.**

a. Director of Human Resources. The Director of Human Resources administers the program from a regulatory and procedural standpoint and coordinates with Agency leadership and selecting officials to uphold the principles of merit and equal opportunity. The Director of Human Resources works with management and the Director, Budget

and Finance Division, to develop fiscally responsive hiring strategies and to communicate these strategies to selecting officials.

b. Selecting Officials. Selecting officials adhere to the principles and procedures set forth in this Instruction. Selecting officials consider all applicants who are appropriately referred and make selections based upon merit principles and equal opportunity. They review the position description for vacant positions to ensure accuracy and work with the Human Resources Division (HRD) if revisions are necessary and to develop a crediting plan.

c. Evaluation Panel. Evaluation panels -- if convened -- evaluate, rate, and rank applicants' experience and overall qualifications, by comparing the information submitted by the applicants or available in their Official Personnel Folders against the qualification standards, the crediting plan, and the relative qualifications of other applicants for the position.

d. Regional Offices.

(1) As appropriate, Regional Directors may establish and maintain cooperative relationships with law school placement offices, Federal agencies, and other appropriate organizations in their geographical areas that might serve as potential recruitment sources.

(2) Regional efforts may include, but are not limited to: providing copies of FLRA vacancy announcements to contacts in law schools, Federal agencies and other organizations; and referring potential applicants to other FLRA offices or the HRD when the potential applicants express interest in other geographic areas.

Chapter 2. Recruitment Procedures

1. **Sources.**

a. FLRA will select recruitment sources that it expects will provide an appropriate number and mix of high quality candidates. For example, vacancy announcements are distributed within the FLRA; to other Federal agencies; to local and state Bar associations, including local minority and women's Bar associations; to the Federal Bar Association Placement Service; to the National Bar Association; to the Federal Job Opportunities Program; and to law schools and labor law professors, law journals, and other appropriate sources within the geographical area identified as appropriate.

b. When recruiting externally to fill vacancies, FLRA will notify its employees concurrent with advertising outside the Agency.

2. **Vacancy Announcements**. After consulting with appropriate management officials, the HRD prepares a position vacancy announcement or other notice of vacancy. Vacancy announcements include the following information:

a. Announcement number;
b. Opening and closing date;
c. Position title, series, and grade(s) and organizational location;
d. Salary range(s);
e. Area of consideration;
f. Promotion potential (if any);
g. Summary of the duties and responsibilities of the position;
h. Minimum qualification requirements, any selective placement factors, and quality ranking factors that the Agency will apply in evaluating applicants; and
i. Other information such as forms required for applying, tour of duty, hazardous conditions, travel and security clearance requirements, the Agency's equal employment opportunity policy, etc.

3. **Areas of Consideration.** FLRA considers the extent of posting needed to obtain sufficient high quality applicants and achieve a representative work force when determining appropriate areas of consideration. Standard areas of consideration are as follows:

a. Local commuting area - FLRA;
b. Agency-wide;
c. Internal and external Applicant Supply Files (ASFs);
d. Local commuting area - external candidates;
e. Geographic regional area in which the vacancy exists; and/or
f. Nationwide.

Chapter 3. Evaluation and Referral Procedures

1. **Minimum Qualification Determination.** Upon receipt of the applications, the HRD determines if the applicants meet the minimum qualification requirements listed in Attachment 1. Those meeting minimum qualifications move to the next steps of the evaluation and referral process.

2. **Rating and Ranking Determination.**

a. Crediting Plan. The selecting supervisor or designee(s) and the HRD develop a crediting plan to describe the factors to be used to further rate applicants who meet minimum qualifications. The crediting plan is used to score applicants against the knowledge, skills, and abilities (KSAs) identified on the vacancy announcement for the position being filled.

b. Rating and Ranking Process. Each applicant meeting minimum qualifications is evaluated against the crediting plan.

c. Evaluation Panels. Evaluation panels are convened, as appropriate. Selecting supervisors, working with the HRD, determine whether a panel is needed. Factors in making this decision include the complexity and organizational level of the vacant position, and the number of applicants. If convened, these ad hoc panels consist of two attorneys and one other subject-matter expert, all at an equivalent or higher grade level than the position being filled. The panel may include a member of the HRD to serve in an advisory capacity.

3. **Referral Process.**

After the applicant evaluation process is completed, the HRD -- or the Regional Attorney or designee (for positions in the OGC Regional Offices) -- prepares Referral and Selection List(s) for the appropriate selecting official.

Internal and external applicants are referred on separate lists; as are applicants who have special consideration or selection rights, such as FLRA excepted service employees with certificates of expected separation or ex-employees on the Reemployment Priority List. The candidates are certified in alphabetical order by last name. Individuals with veteran's preference are so indicated on the lists.

If the selecting supervisor requests further candidates after considering those referred, the HRD will send the supervisor another Referral and Selection List(s) of additional applicants who fell below the initial cut-off score, on separate lists, as described above.

Referral and Selection Lists are valid for 90 calendar days from the date of issuance. The HRD will extend the list(s) for an appropriate time at the selecting supervisor's request and for valid cause.

The supervisor may make more than one selection from a valid Referral and Selection List. If a supervisor selects more than one candidate from the same list, the supervisor must notify the HRD, in writing on the Referral and Selection List(s), of each selection.

Supervisors who experience additional vacancies in identical positions while they have a valid Referral and Selection List may also choose to request a new Referral and Selection List to fill the additional vacancy(ies).

Chapter 4. Selection Procedures

1. **Interviews.** Although interviews are not mandatory, they can be useful tools in bridging gaps in information contained in applications, in providing additional insight into applicants' suitability for the vacant position, and in promoting the principles of equal opportunity.

   For internal placement actions involving bargaining unit employees, management will interview all FLRA employees on the Referral and Selection List if it interviews one. For positions filled through external recruitment, management will determine when and whom to interview.

2. **Selection, Job Offer, and Notification Processes.**

   a. Job Offers. When the selecting officials complete the selection process, they may offer the job to the individual selected or ask HRD to make the job offer. When the selected individual accepts the offer, the selecting official signs and dates the Referral and Selection List, documenting the reasons for the selection; then returns the list to HRD for processing the action.

   b. Documentation by Selecting Officials. Selecting officials should document interviews and other discussions with applicants that pertain to their selection decision. This documentation should be sufficient to reconstruct the recruitment action taken, if necessary. Supervisors should retain this documentation at least 30 calendar days after the selectee's appointment, or until any resultant grievances or EEO complaints are adjudicated.

   c. Report to Duty. After the selecting official or the HRD makes an offer and the selectee accepts, the HRD manages remaining aspects of the recruitment action, to include negotiating release dates with Personnel Offices if necessary, confirming the selection and salary rate, and notifying the selectee of when and where to report to work.

   d. Non-Selection. Selecting officials are not required to select from a Referral and Selection List, regardless of the number of candidates on the list. If no selection is made, the selecting official should return the list(s) to the HRD, with the reasons for non-selection documented on the list(s).

The selecting official may then request another list of additional qualified candidates from the initial announcement, or may request that the announcement be amended to extend the time in which to apply, the area of consideration, or the grades at which the position will be filled.

HRD will ensure that interviewed applicants receive notification of the outcome of the interview. HRD will consult with the supervisor to determine who will notify the interviewees. If the supervisor does not choose to do so, HRD will prepare a letter to the interviewees. A copy of the letter(s) will be retained in the merit staffing file. If phone notifications are made by the supervisor, the supervisor will provide a note to HRD stating such. (Rev 3/11/99)

Chapter 5. Trial and Probationary Periods

1. **Purpose.** An Attorney or Law Clerk Trainee on an initial appointment to the Federal Government or into the excepted service is required to serve a trial period, which is considered an extension of the hiring process. This period is one year for excepted service employees who are preference eligibles, and two years for those who are not preference eligibles. Employees who do not demonstrate that they are qualified for continued employment will be notified and separated before the trial period ends.

2. **New Appointments.** Prior Federal service counts toward completion of the trial period when the attorney performed the same line of work. Trial periods for part-time attorneys are counted the same as for full-time employees. For attorneys on intermittent appointments -- appointments that do not include a regularly scheduled tour of duty -- trial periods are computed based upon the completion of total full-time or part-time days worked.

3. **Employment in New Lines of Work.** Attorneys who have completed trial periods in FLRA or in other Federal agencies but who move into new lines of work through a *new appointment* (e.g. from application of procurement law to application of labor and employment law) complete a new trial period.

4. **Probationary Periods for New Supervisors.** An attorney is required to complete a single one-year probationary period in an initial supervisory or managerial position, regardless of how many agencies and positions in which the employee has served. Temporary service (e.g. on a detail or temporary promotion) counts toward completion of the supervisory/managerial probationary period. An attorney who, for reasons of supervisory or managerial performance, fails to satisfactorily complete the supervisory/managerial probationary period is entitled to be returned to a non-supervisory/non-managerial position at the same grade the employee held before entering the supervisory/managerial position. If an attorney accepts a downgrade to an

initial supervisory or managerial appointment and does not satisfactorily complete the probationary period, reassignment entitlement is to the same grade as the one held during the supervisory/managerial probationary period.

5. **Separation during Trial Period.**

a. For reasons related to misconduct or poor performance on the job. Employees serving in trial periods, who are being separated because of failure to meet performance or conduct requirements during the trial period, are entitled to written notice of the reasons for and the effective date of the termination.

b. Termination for pre-employment reasons. If the termination of an employee serving in a trial period is based in whole or in part upon conditions arising before appointment, the employee is entitled to advance written notice of proposed adverse action -- stating specifically and in detail the reasons for the proposed action, a reasonable time to respond to the reasons supporting the proposed action, and a written notice of decision which is delivered to the employee at the time of or before the termination date.

c. Appeal rights.

(1) A non-managerial, non-supervisory employee serving in a trial period who is terminated, as described in this subchapter, may appeal to the Merit Systems Protection Board (MSPB) only for reasons of discrimination due to marital status or partisan political affiliation or for reasons of procedural impropriety. If claiming discrimination for one of these reasons, a probationer may also allege discrimination based on race, color, religion, sex, national origin, age, or handicapping condition.

(2) An excepted service employee who is serving a trial period as a first-time manager or supervisor, who is assigned back to a non-supervisory or non-managerial position, as described in this subchapter, may appeal to MSPB only for reasons of discrimination due to marital status or partisan political affiliation.

d. Relationship to other actions. An action that demotes an employee to a lower grade than the one held prior to accepting a first-time managerial or supervisory position, or an action against an individual in an initial trial period for supervisors or managers that is not based on supervisory or managerial performance, is taken under and governed by 5 CFR Parts 752 or 432 as appropriate.

Chapter 6. Grievances and Complaints

An employee who believes that he/she was not properly considered for a vacant position may file a grievance. Bargaining unit employees may file a grievance through the collective bargaining agreement between the FLRA and UAE; non-unit employees may file a grievance using the Agency's administrative grievance procedure. Employees may not grieve nonselection from a list of properly ranked and certified applicants.

An employee or applicant alleging discrimination in the hiring or selection process because of race, color, religion, sex, or national origin, or age or handicap, may file a complaint under the provisions outlined in 29 CFR Part 1614, Equal Employment Opportunity Regulation with the

FLRA Equal Employment Opportunity Director; or, in the case of discrimination due to marital status or political affiliation, with the Office of Special Counsel.

PART II. INTERNAL PLACEMENT

Chapter 1. In-Service Placement

1. **Promotions.**

   a. General. Promotions may be competitive or non-competitive, temporary or permanent. Non-competitive promotions include career ladder promotions, promotions based on accretion of duties, those that do not exceed 120 days, and repromotions -- except repromotion of employees downgraded for personal cause. Other promotions normally are made through competitive procedures.

   b. Promotion Eligibility. To be eligible for promotion, an employee must meet the Agency's experience requirements (that include a one year in grade concept) and must also receive a summary performance rating of "Acceptable" (or above if the most recent rating was issued under a three- or more-levels system) on the most recent performance rating of record. An employee who has no current performance rating of record is considered to be "Acceptable" for purposes of this section.

   c. Temporary Promotions.

      (1) General. Except when the service is for a very brief period, a temporary promotion generally is the most appropriate means of meeting a need for the

temporary service of an employee in a higher graded position. Employees temporarily promoted must meet the qualification requirements of the higher-graded position. Temporary promotions are appropriate in the following circumstances:

(a) When an employee is assigned the duties of a higher graded employee during an extended absence of the higher graded employee;

(b) When a higher-graded position must be filled pending a permanent appointment;

(c) When an employee assumes an increased workload that is classified at a higher grade level for a limited period of more than 30 days; and

(d) When an employee participates in a time-limited special project, the duties of which are classified at a higher grade level.

Temporary promotions that exceed 120 days must be filled competitively.

Temporarily promoted employees must understand the temporary nature of the action and all the conditions relating to it, including the expected duration. They must understand that they will return to their regular position when they are no longer needed in the higher graded position, which could occur before the "not to exceed" date of the action. To achieve this understanding, temporarily promoted employees must sign statements that they have full knowledge of the temporary nature of the promotion.

(2) Duration of Temporary Promotion. The initial period of a competitive temporary promotion may not exceed one year. If the employee's services are still needed at the higher grade after one year, management should consider whether the situation requiring the temporary promotion is actually temporary. If it is temporary, management may extend the promotion for up to four additional years in one-year increments. If the need is not temporary, management should take steps to fill the position permanently.

(3) Converting a Temporary Promotion to Permanent. A temporary promotion may be converted to permanent without further competition if: (a) it was made under competitive procedures originally; and (b) the announcement informed prospective applicants that the temporary promotion might lead to a permanent promotion.

(4) Terminating a Temporary Promotion. Unless terminated or extended prior to its stated expiration date, a temporary promotion automatically ends on the specified date. Neither the adverse action procedures of 5 CFR Part 752 nor the reduction-in-force procedures of 5 CFR Part 351 apply when a temporary promotion ends and the incumbent is returned to the same position or is placed, with the incumbent's consent, in a different position without time limits at the same grade as the incumbent's regular position.

(5) Additional Requirements for Temporary Promotions.

a. Temporary promotions of Attorneys normally will not be made to positions below GS-14.

b. Only rarely will employees be temporarily promoted to positions that would require a temporary change of duty station and associated travel and per diem costs.

2. **Details.** Details serve the purpose of meeting temporary work requirements and may be effected under the following conditions:

a. Details to the Same or Lower-Graded Positions. Supervisors may detail employees without competition to positions at the employee's same or lower grade -- with no known promotion potential -- or to unclassified duties, for an initial period of up to 120 days. Supervisors may extend such noncompetitive details if necessary until the mission-related need for the detail ends.

b. Details to Higher Graded Positions or to Positions with Known Promotion Potential. Supervisors may detail employees without competition to higher graded positions or to positions with known promotion potential for up to 120 days. If these details are extended beyond 120 days, employees must compete for the opportunity.

3. **Reassignments.** Reassignments may be effected voluntarily or involuntarily. If an employee desires a reassignment, the employee should notify his/her supervisor or the HRD in writing. Employees may be reassigned involuntarily, through management-directed reassignments, based on mission needs or changes, transfers of function, or performance-based actions.

4. **Changes to Lower Grade.** As with reassignments, changes to lower grade may be effected voluntarily or involuntarily. Involuntary changes to lower grade may be caused by a reclassification action, failure to meet performance expectations, or reduction-in-force.

Chapter 2. Internal Recruitment

1. **Internal Applicant Supply File (IASF).** The HRD maintains a list of employees who have expressed interest in reassignment. In January of each year, the HRD notifies employees of the opportunity to be placed in the IASF that will indicate employee interest by job series and grade(s), organization, and geographic location. In filling vacancies, the HRD will refer qualified applicants from the IASF to selecting supervisors on a separate referral list. Employees will remain on the reassignment list for one year from entry unless the employee either leaves the Agency or withdraws his or her name. HRD will inform the UAE of reassignments to and from bargaining unit positions that are made from the IASF.

2. **Advertising Vacancies Internally.**

   a. Period of Advertisement. FLRA advertises internal opportunities for reassignment and promotion for a minimum of 14 calendar days.

   b. Amendments, Extensions, Cancellations. Vacancy announcements or other postings may be extended or amended to change or clarify the content of the announcement or expand the area of consideration. Vacancy announcements and other postings may be canceled at any time.

Chapter 3. Application Processes

1. **Procedures for Applying.**

   a. Reassignment of Change to Lower Grade. Internal FLRA applicants may apply for an advertised or otherwise posted reassignment -- which is to a specific position in the excepted service at the same or lower grade or with no greater promotion potential than the employee's current position -- via E-Mail, memorandum, or a brief letter addressed to the HRD specialist who is listed as the contact for the vacancy. Internal applicants are not required to submit a resume or an application form, although they may do so if they believe that relevant education or experience is not adequately documented in their Official Personnel Files.

   b. Promotion. Internal applicants must apply through resume or application form for excepted service promotion opportunities or for excepted service positions outside of their current line of work. If a position is advertised at multiple grades, all applicants must indicate the lowest grade or salary they will accept. If they do not do so, the HRD will assume that the lowest acceptable grade is their current grade or salary rate. Applicants will not receive consideration for grades or salaries below that which they have identified as acceptable.

2. **Process for Considering Absent Employees.** Supervisors will make reasonable efforts to inform eligible subordinates who are on travel or in leave status of the availability of vacancies for which the subordinates may qualify and may wish to apply. Qualified employees who are absent for legitimate reasons for longer periods (e.g., for details, approved leave, military leave, official travel, or training) may receive consideration for FLRA vacant positions (including promotional opportunities) for which they qualify by sending a letter or other notice requesting absentee consideration to the HRD. They may send the notice prior to their departure or at any time during their absence. Based on the written request, the HRD will include the employee's application among those in competition for any FLRA vacancy in the geographic area and at the series and grade level(s) for which the employee has expressed interest and is qualified and eligible. If the absent employee can be considered for the vacancy position noncompetitively (e.g. for a reassignment or, if the absent employee is a repromotion eligible, for repromotion), the HRD will refer the employee's application on a separate certificate.

PART III. EXTERNAL RECRUITMENT

1. **External Applicant Supply File.** The HRD maintains an Applicant Supply File of external qualified attorney or law clerk (trainee) applicants who express general interest in employment with FLRA that is not in response to a specific vacancy. The HRD will maintain each application for a six-month period. The HRD will refer qualified applicants from the Applicant Supply File on a separate referral list with other qualified applicants for vacancies.

2. **Advertising Positions.** FLRA posts external recruitment announcements for a minimum of 14 calendar days. Vacancy announcements may be extended or amended to expand the posting time, change or clarify the content of the announcement, or expand the area of consideration. Vacancy announcements may be canceled at any time.

3. **Application Process.** Applications must be received in the HRD by the close of business of the closing date posted on the vacancy announcement to be considered timely. Applications that are not received timely are not considered. Applicants must specify by vacancy announcement number the position for which they are applying. If they do not, the HRD may attempt -- but is not obligated -- to determine the vacancy based upon information the applicant provides. If a position is advertised at multiple grades, applicants must indicate the lowest grade or salary they will accept. If they do not do so, the HRD will assume that the lowest acceptable grade is their current grade or salary rate. Applicants are not referred for grades or salaries below that which they have identified as acceptable. External applicants must either deliver or mail their applications. HRD does not accept faxed applications from external applicants.

4. **Non-Consideration.** The HRD cannot consider applications that are incomplete or illegible or applications submitted using postage paid envelopes (penalty mail).

PART IV. PROGRAM ADMINISTRATION AND EVALUATION

This Instruction is administered by the HRD. Questions and suggestions for improvements are welcome and should be directed to the HRD.

Attachments

This Instruction is effective 12/27/97.

Signed

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Solly Thomas
Executive Director

ATTACHMENT 1

Minimum Qualification Standards for Attorney and Law Clerk Trainee Positions

1. **Qualifications For GS-9.**

(a) Attorney Positions. The applicant must possess the first professional law degree (LL.B. or J.D.) from an accredited law school and have been admitted to a Bar.

(b) Law Clerk Trainee Positions. The applicant must possess the first professional law degree (LL.B. or J.D.) from an accredited law school.

2. **Qualifications For GS-11.**

(a) Attorney Positions. The applicant must possess the first professional law degree from an accredited law school, have been admitted to a Bar and have at least one year of professional legal experience; or have completed a year of acceptable performance in the same or closely related work at the GS-9 level.

(b) Law Clerk Trainee Positions. The applicant must possess the first professional law degree from an accredited law school and have at least one year of professional legal experience.

3. **Qualifications For GS-12.**

The applicant must have two years of professional legal experience or an equivalent combination of professional legal experience and education as provided in paragraph 7 below, or must have completed one year of acceptable performance in the same or closely related work at the GS-11 level.

4. **Qualifications For GS-13.**

The applicant must have three years of professional legal experience or an equivalent combination of professional legal experience and education as provided in paragraph 7 below, of which one year must have been in the labor relations field or other public employment law field; or comparable experience; or must have completed one year of acceptable performance in the same or closely related work at the GS-12 level.

5. **Qualifications For GS-14.**

The applicant must have four years of professional legal experience or an equivalent combination of professional legal experience and education as provided in paragraph 7 below, of which two years must have been in the labor relations field or other public employment law field; or comparable experience; or have completed one year successfully performing the same or closely-related work at the GS-13 level.

6. **Qualifications For GS-15.**

The applicant must have five years of professional legal experience or an equivalent combination of professional legal experience and education as provided in paragraph 7 below, of which three years must have been in the labor relations field or other public employment law field; or have completed one year successfully performing the same or closely-related work at the GS-14 level.

7. **Special Provisions.**

a. Applicants for Grades 9 and 11 who have not been admitted to the Bar may, if otherwise qualified, be hired under provisional appointments of 14 months as Law Clerk Trainees. Law Clerk Trainees must be admitted to the Bar within 14 months after appointment to FLRA or be separated for failure to meet a condition of employment. Upon passing the Bar, Law Clerk Trainees receive new appointments to Attorney positions without time limits.

b. Applicants for consideration at Grades 12 and above must have been admitted to a Bar.

c. Professional legal education beyond the first professional law degree may be substituted for professional legal experience as follows:

(1) The second professional law degree (LL.M.) which requires one full year of graduate study may be substituted for one year of professional legal experience.

(2) The third professional law degree (S.J.D.) may be substituted for an additional year of professional legal experience.

d. For entry-level hires at the Grade 11 level, superior law student work or activities as demonstrated by one of the following MAY be substituted for the one year of professional legal experience needed to qualify for the GS-11:

(1) Academic standing in the upper third of the law school graduating class;

(2) Work or achievement of significance on law school's official law review;

(3) Special high-level honors for academic excellence in law school, such as election to the Order of the Coif;

(4) Winning of a moot court competition or membership on the moot court team which represents the law school in competition with other law schools;

(5) Full-time or continuous participation in a legal aid program as opposed to one-time, intermittent, or casual participation;

(6) Significant summer law office clerk experience in labor relations or a related field; or

(7) Other equivalent evidence of clearly superior achievement.

e. FLRA employees who are not in the Attorney occupational series but who meet the minimum qualification requirements for a GS-9 Attorney are eligible for reassignment to the Attorney occupational series at their same grade level. Such employees must serve one year in the Attorney occupational series to be eligible for promotion as an Attorney to the next higher grade level. This one-year waiting period does not apply in situations where the employee has performed all of the duties and responsibilities normally performed by employees classified in the Attorney occupational series in that office or to Law Clerk Trainees who are being converted to Attorney positions after passing the Bar.

f. Current (or former) Attorneys or Law Clerk Trainees of other Federal departments and agencies, who meet the minimum qualification requirements established in this Attachment for GS-9 will be considered, at a minimum, eligible for their current (or last) grade level without reference to the FLRA's qualification standards regarding experience. However, to be promoted to the next higher grade level, an Attorney or Law Clerk Trainee, who upon appointment does not meet the FLRA qualification standard for that grade level, must serve one year in order to be eligible for promotion to the next higher grade level.

ATTACHMENT 2

Federal Labor Relations Authority
Career Ladders

Job Series	Job Title	Career Ladder Progression	Target Grade
0904	Law Clerk Trainee	9, 11	11
0905	Attorney Advisor (Labor)	9, 11, 12	13
0905	General Attorney (Labor)	9, 11, 12	13

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Instructions

11/8/99

SUBJECT: AUDIT AND INTERNAL REVIEW FOLLOW-UP

A. **PURPOSE**. This Instruction establishes the Federal Labor Relations Authority (FLRA) policy and procedures for audit follow-up. The Instruction is intended to enhance the benefits that accrue to the FLRA from audits and internal reviews conducted of its operations, programs, systems, functions, activities and management controls. The primary purpose of the follow-up system is to ensure that managers implement the agreed upon recommendations.

B. **SCOPE.** The scope of this Instruction applies to all audit and internal review reports pertaining to the FLRA issued by the FLRA's Office of the Inspector General (OIG), the General Accounting Office (GAO), independent accounting firms and other audit organizations.

D. REFERENCES. The policies and procedures of this Instruction are established pursuant to:

1. Office of Management and Budget (OMB) Circular A-50, Audit Follow-up, revised September 29, 1982;

2. Legislative Reorganization Act of 1970;

3. OMB Circular A-73, Audits of Federal Operations and Programs; and

4. Inspector General Act of 1978, as amended.

DISTRIBUTION: C, OC, M1, M2, OM1, OM2, IG, SOL, CC, XD, ALJ, IRRS, OA, OA/B, OA/P, OA/F, OA/S, GC, DGC, AGC/LP, RD-1 to RD-7, FSIP

OPI: IG

D. **DEFINITIONS.**

1. Responses to Audit and Internal Review Reports. Written comments by FLRA officials indicating agreement or disagreement on reported findings and recommendations.

2. Management Decisions. A final decision made by the designated Senior Management Audit/Internal Review Follow-up official, in response to audit or internal review report recommendations that may include actions concluded to be necessary, or a determination that no action is necessary.

3. Audit/Internal Review Resolution. OIG agreement with alternative actions (different from report recommended actions), proposed by the designated Audit/Internal Review Management Follow-up official, or OIG agreement to rescind a report recommendation.

4. Corrective Action. Measures taken to implement resolved audit or internal review findings and recommendations.

5. Final Action. Completion by management of all actions necessary to implement report recommendations, or a determination that no action is necessary.

E. **RESPONSIBILITIES.**

1. Designation. The Chair, FLRA, has oversight responsibility for the entire agency. The Chair, FLRA, is the Audit/Internal Review Follow-up Official for audits and internal reviews conducted of Authority activities; the General Counsel is the Audit/Internal Review Follow-up Official for audits/internal reviews conducted of General Counsel activities; and the Chair, Federal Service Impasses Panel (FSIP), is the Audit/Internal Review Follow-up Official for audits/internal reviews conducted of FSIP activities. This authority may be delegated with appropriate documentation.

2. Audit/Internal Review Follow-up Official. The appropriate Audit/ Internal Review Follow-up official is responsible for ensuring that:

   a. an internal system of audit and internal review follow-up, including management decisions and corrective actions, is documented, up to date and meets acceptable audit practices;

   b. timely responses (30 days from receipt of report unless otherwise agreed upon) are made to all audit and internal review reports;

   c. disagreements are resolved;

d. corrective actions are taken in a timely manner (6-12 months unless otherwise agreed upon); and

e. the Chair, FLRA, is informed promptly by the FLRA Inspector General of OIG disagreements with management or the Audit/Internal Review Follow-up official's decisions.

3. Office Directors. Office Directors are responsible for:

a. reviewing and carefully considering audit and internal review reports, or parts thereof, concerning their respective organizations, activities, functions and programs;

b. promptly accomplishing or initiating all appropriate corrective action(s);

c. preparing or endorsing responses to audit and internal review reports and ensuring their timely receipt by designated recipients; and

d. directing and monitoring the implementation of proposed corrective action(s) to increase assurance that they are implemented and completed within specified time limits.

4. Inspector General. The FLRA Inspector General is responsible for:

a. discussing all potential findings with appropriate management officials prior to the issuance of an audit or internal review report. In the case of external audits/reviews, potential findings will be presented by the external auditor or reviewer to the Inspector General and appropriate management official(s);

b. resolving disputes arising from alternative recommendations proposed by the designated management audit/internal review follow-up official;

c. maintaining an automated Findings and Corrective Action Follow-up system for recommendations made by the FLRA OIG, GAO, independent accounting firms and all other audit organizations;

d. providing the Chair, FLRA with a quarterly corrective action status report for all audit and internal review findings and advising the Chair, FLRA of audit and internal review corrective actions which are not responded to by management in a timely and responsible manner; and

e. providing Congress and the Chair, FLRA with a semi-annual summary of the status of audit and internal review correction actions in the OIG Semi-Annual Report.

F. POLICY.

1. Responsible officials will make maximum practical use of audit reports to improve the effective management of their programs and to correct unsatisfactory conditions by eliminating their systemic cause, preventing their recurrence, and strengthening internal controls to minimize possibilities of fraud, waste and abuse.

2. Audit/Internal Review findings and recommendations will be resolved promptly. Corrective action must normally occur within six months to a year from the date a final report is issued. Following management concurrence, corrective actions will proceed as rapidly as possible.

3. The appropriate Audit/Internal Review Follow-up official will furnish the FLRA Inspector General with explanations of delays and timetables for corrective action for all audit/internal review reports findings lacking completed corrective actions as requested by the FLRA Inspector General.

4. Management officials will be evaluated on their effectiveness in correcting findings and implementing management recommendations or necessary corrective actions. All management officials will have a performance element reflecting such.

G. **RESPONSES TO GAO REPORTS**. The following provisions apply to the processing of GAO audit reports.

1. Coordinating Responsibility. The FLRA Inspector General is responsible for coordinating management responses to final GAO audit reports.

2. Final Reports. Responses to these reports will be prepared and processed, giving due consideration to the specific requirements set forth below.

3. Statements on Final Reports.

a. Statements to Congressional Committees and OMB. In accordance with Section 236 of the Legislative Reorganization Act of 1970, when a final GAO report contains recommendations to the FLRA, the Chair, FLRA, shall:

(1) submit a written statement to the Senate Committee on Governmental Affairs and the House Committee on Government Operations no later than 60 days after the date of such report. This statement will report the action taken or to be taken by the FLRA with respect to GAO's recommendations.

(2) submit a written statement to the Committees on Appropriations of the Senate and the House of Representatives to accompany the FLRA's first request for appropriations subsequent to 60 days after the date of the GAO report. This statement will report the action taken, or to be taken by the FLRA with respect to GAO's recommendations.

(3) furnish to GAO two copies of the statements provided to the Congressional committees, as required by OMB Circular A-50, revised, September 29, 1982. These copies should be submitted at the time of submission of the statements to the Congressional committees.

b. Preparation of Replies.

(1) Statements of replies should identify the applicable GAO report by number and date (e.g., GAO/GGD-82-00, dated January 29, 1992).

(2) If the FLRA Chair's response to a draft report is accurately and adequately reflected by GAO in the final report, the designated office should prepare appropriate transmittal letters to pertinent Congressional committees and GAO. Earlier responses to the draft report may be included, if appropriate.

(3) Responses to final GAO reports will be prepared for the signature of the Chair, FLRA.

I. RECORDS MAINTENANCE AND SEMIANNUAL REPORTS.

1. Office Directors. Office Directors responsible for implementing resolved GAO recommendations will maintain records showing the status of pertinent audit reports or applicable portions of such reports throughout the entire process of management decision and corrective action.

2. Audit/Internal Review Follow-up Official and Office of the Inspector General. The Audit/Internal Review Follow-up official and the OIG will independently maintain tracking systems of the status of all GAO report recommendations until final action has been completed.

3. Semiannual Reports. The FLRA Inspector General will be responsible for preparing for the FLRA Chair's signature, the required semiannual reports to Congress.

a. General Requirements. Semiannual reports, including information set forth in Appendix A, will be prepared as of March 31st and September 30th of each fiscal year.

b. Deadline. The FLRA Chair's semiannual report on the status of all oversight initiatives will be prepared not later than the 25th day of the month following the end of the semiannual period covered by the report (i.e., April 25th and October 25th). The contents of the report shall contain the items status of corrective actions. This data will be submitted by the FLRA Chair with the transmittal of the Inspector General's semiannual report to Congress within 30 days after receipt of the Inspector General's report.

This Instruction is effective on November 8, 1999.

Solly Thomas
Executive Director

APPENDIX A

AUDIT AND INTERNAL REVIEW ITEMS FOR THE SEMIANNUAL REPORT

1. Statistical tables showing the total number of audit and internal review reports and the total dollar value of disallowed costs for audit reports --

    a. for which final action had not been taken by the commencement of the reporting period;

    b. on which management decisions were made during the reporting period;

    c. for which final action was taken during the reporting period, including:

        (1) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise;

        (2) the dollar value of costs disallowed that were written off by management; and

    d. for which no final action has been taken by the end of the reporting period.

2. Statistical tables showing the total number of audit and internal review reports and the dollar value of recommendations that funds be put to better use by management --

    a. on which final action had not been taken by commencement of the reporting period;

    b. on which management decisions were made during the reporting period;

    c. for which final action was taken during the reporting period, including:

        (1) the dollar value of recommendations that were actually completed;

        (2) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

    d. for which no final action has been taken by the end of the reporting period.

3. A statement with respect to audit and internal review reports on which management decisions

have been made, but final action has not been taken (other than audit reports on which a management decision was made within the preceding year) containing --

a. a list of such reports and the date each report was issued;

b. the dollar value of disallowed costs for each such report;

c. the dollar value of recommendations that funds be put to better use, agreed to by management for each such report; and

d. an explanation of the reasons final action has not been taken with respect to each report, except that such statement may exclude reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

AUDIT AND INTERNAL REVIEW FOLLOW-UP

FLRA 2920.1

January 19, 1999

FLRA AUDIT POLICY AND PROCEDURES

A. PURPOSE. This Instruction establishes Federal Labor Relations Authority (FLRA) policy and procedures for conducting internal audits on programs and functions within the FLRA.

B. SCOPE. The provisions of this Instruction are applicable to all FLRA organizational elements. This Instruction supersedes FLRA Instruction 2920.1, December 16, 1991.

C. AUTHORITY.

1. The Inspector General Act of 1978 (Public Law 95-452) as amended by, inter alia, the Inspector General Act Amendments of 1988 (Public Law 100-504).

2. Title 31, U.S. Code, Chapter 35, Accounting and Collection.

D. REFERENCES.

1. Office of Management and Budget (OMB) Circular A-73, "Audit of Federal Operations and Programs."

2. Government Auditing Standards, 1994 Revision, U.S. Comptroller General, General Accounting Office.

3. General Accounting Office Guide to Federal Agencies' Procurement of Audit Services from Independent Public Accountants.

E. DEFINITIONS.

1. **Audit**: The examination, review or study of policies, procedures, systems, programs and documentation for the purpose of providing management improved economy and efficiency of operations, increasing the achievement of program goals and objectives, and preventing fraud, waste,

abuse and mismanagement of FLRA programs and resources. Audits are a valuable part of the FLRA management accountability process. They provide an independent and objective assessment of financial and program activities and identify areas needing improvement. An audit may be conducted on any FLRA program and operation (internal) and on any external entity which receives funds from the FLRA. The term "audit" includes both financial and performance audits. Both are an essential element of public control and management accountability. There are also other types of evaluations which the Inspector General may use to assess FLRA activities. These include financial audits, performance audits, internal management reviews, management letters and surveys. A summary of each type of evaluation follows:

a. Financial Audits: Financial audits determine whether the records of the entity audited represent fairly the financial position and cash flows or changes and whether the entity has complied with laws and regulations and generally accepted accounting principles of the Federal government for those transactions.

b. Performance Audits: Performance audits include economy and efficiency reviews and program audits. They determine whether an entity is acquiring, protecting and using its resources in a cost efficient and effective manner and identify causes of inefficiencies or uneconomical practices. Program audits determine the extent to which the mission is being accomplished and whether program administration is in compliance with applicable laws and regulations.

c. Internal Management Reviews: Internal management reviews focus on evaluating the effectiveness and efficiency of management controls in programs and functions. They encompass both the administrative and technical aspects of a program's or function's compliance with rules and regulations and the controls used to minimize fraud, waste, abuse or mismanagement.

d. Management Letters: Management letters are used to bring to the attention of management issues and activities which should be addressed but do not require formal audits or investigations. Management letters are generally unplanned and are issued to report on situations found in conjunction with an on-going or completed audit or investigation. They are also used to expand upon previously-issued audit reports and recommendations.

e. Management Self-Assessments: Management self-assessments are standardized operational questionnaires that are completed by managers to provide an internal baseline and measure of operational productivity.

f. Surveys: Surveys are standardized documents requesting specific information from individuals. Surveys may be used alone or as part of other audit and evaluation

programs. Results are usually statistically tabulated for comparison or performance information.

2. **Audit Plan**. An annual schedule of programs, operations and/or functions to undergo an audit each fiscal year. This plan is based on statutory requirements, congressional areas of interest and concern, FLRA management requests, Inspector General evaluation of areas of significance and risk.

F. POLICY.

1. It is the policy of the FLRA to conduct audits according to government auditing standards promulgated by the Comptroller General of the United States to help provide accountability and assist Federal officials and employees in carrying out their responsibilities. Government auditing standards not only include a codification of current audit practices, but also concepts and audit areas that are still evolving and vital to achieving accountability objectives sought in auditing government programs and services.

2. In performing audits and internal reviews, the Inspector General will act as an objective, independent fact-gatherer, having no interest or activity in the formulation of policy, program administration or operations of the program audited. Audits will focus on compliance with policy and procedures, good business practices, cost efficient and effective operations and effectiveness in preventing and minimizing systemic problems or vulnerabilities causing fraud, waste, abuse and mismanagement.

3. The Inspector General will coordinate and provide oversight for all audits and reviews involving the examination and evaluation of FLRA organizations, programs and operations conducted internally or by external auditors. This does not include reviews and assessments proactively initiated by management to evaluate their own operations.

4. At the beginning of each fiscal year, the Inspector General will prepare an Audit Plan which indicates areas to be audited over the next year. These areas will be determined by Presidential and Congressional areas of interest, solicited areas of interest or concern from FLRA management and Inspector General determination of need. The Audit Plan will maintain sufficient flexibility to change with evolving changes in priorities.

5. Specific procedures for the conduct of FLRA audits will be documented in an FLRA Audit Manual. These will adhere to, and be conducted in compliance with, the Comptroller General government auditing standards. Working papers and final reports will reflect sufficient, competent and relevant evidence affording a reasonable basis for findings and conclusions.

6. Draft audit reports will be issued within 60 days of the completion of an audit, unless otherwise stated. Audit draft reports and final reports will be directed to the Senior Manager or designated Office Director who has authority and responsibility to ensure that appropriate actions are taken. Management will have 30 days to provide comments on the draft. Normally, the final report will be issued within 30 days after the receipt of management comments. Management comments will be incorporated into the final report as an attachment. Final reports will be issued to the responsible Senior Manager who may then determine further distribution. The Chair and Members of the Authority will be provided copies of reports affecting Authority operations. The General Counsel will receive reports affecting the General Counsel's operations, and the Chair, Federal Service Impasses Panel will receive reports affecting the Panel's operations. It should be understood that final audit and evaluation reports are considered public domain. The Inspector General will provide the Chair, FLRA with a copy of all final audit reports and responsible management's Corrective Action Plan.

G. RESPONSIBILITIES.

1. The Inspector General is responsible for:

a. Developing and implementing audit policies and procedures based on government auditing standards; developing an annual Audit Plan which reflects a scheduled evaluation of programs, operations and activities based on areas of interest and concern of the Administration, Congress, FLRA management and the Inspector General's assessment of oversight need; and providing FLRA management and personnel guidance and training, as required, in audit protocol;

b. Planning, performing or providing coordination and oversight of audits of FLRA programs, operations, functions and services in compliance with government auditing standards;

c. Providing prospective auditees with an official notice of audit, not less than 30 days prior to the start of an audit, and appropriate guidance and direction, as required;

d. Preparing or reviewing audit reports with submission to appropriate FLRA management for corrective actions, as warranted, and indicating the amount of savings obtainable by implementing report recommendations, when possible;

e. Providing documented cyclic follow-up of management corrective actions until completion;

f. Providing required reporting on ongoing and completed fiscal year audits to the Chair, FLRA and to Congress, as required by the Inspector General Act;

g. Resolving, with appropriate management, any significant disagreements on findings or recommendations resulting from any audit or evaluation;

h. Providing responsive audit liaison to external auditor, as required; and

i. Performing other activities, as required, including assistance to legislative bodies either by developing or answering questions for hearings, developing methods and approaches to be applied in evaluating new or proposed programs, participating in community fora and Inspector General or Auditor evaluation panels, mentoring audit and investigator personnel, etc.

2. FLRA Management is responsible for:

a. Cooperating with the Inspector General and auditors during the conduct of audits by providing requested documentation and records, ensuring that principals are available for interviews, and providing unrestricted support to the audit mission;

b. Responding within 30 days of receiving a final Audit Report (or other internal review) with a Management Determination, comments and a Corrective Action Plan addressing findings and recommendations;

c. Resolving significant disagreements with Audit Report findings or recommendations by providing evidence or documented justification for the disagreement, understanding that the final position is determined by the Inspector General;

d. Ensuring that corrective actions are implemented in a timely fashion and reported as completed with documented evidence to the Inspector General within 5 days of completion of the corrective action; and

e. Actively participate in the formulation of the FLRA annual Audit Plan by providing suggestions or requests for audits of FLRA programs, operations, and functions, either when solicited by the Inspector General or as necessary during the work year.

3. FLRA employees and contractors will:

a. Cooperate fully with internal and external auditors;

b. Provide documentation and/or access to documentation in a timely and responsive manner; and

c. Maintain availability for discussions, as required, during the conduct of all audits and evaluations.

This Instruction becomes effective on January 19, 1999.

Solly J. Thomas, Jr.
Executive Director

FLRA AUDIT POLICY AND PROCEDURES

Federal Labor Relations Authority
Washington, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION FLRA No. 3640

ALTERNATIVE WORK SCHEDULES	Issue Date: November 30, 2011

A. GENERAL PROVISIONS.

1. Purpose. The purpose of this Instruction is to prescribe the policies and procedures for the implementation and administration of Alternative Work Schedules (AWS) at the Federal Labor Relations Authority (FLRA).

2. Scope. This Instruction applies to all FLRA employees.

3. References.

a. 5 U.S.C. Chapter 61, Subchapter II.
b. 5 C.F.R. Part 610, Subpart D.
c. 5 C.F.R. Part 550.

4. Introduction and Policy. AWS enables the FLRA to provide increased customer service through extended office coverage while also allowing employees flexibility in scheduling their activities. Accordingly, the FLRA's policy is to accomplish its mission while accommodating individual employee schedule needs to the extent possible, with a shared sense of accountability and responsibility among employees, supervisors, and managers.

5. Responsibilities.

a. Participants in the AWS Program. All employees, supervisors, and managers may participate in the AWS program, except that, absent unusual circumstances, members of the Senior Executive Service may not participate in the program. (Throughout this Instruction, "employee" includes "employees, supervisors, and managers" as participants.) Employees must submit requests for AWS in specific terms and in writing to their immediate supervisor, and must obtain their supervisor's approval of the request before beginning to work under an AWS. Employees whose most recent performance rating of record is less than "Fully Successful" are not eligible to participate in an AWS. Employees are responsible for managing their schedules so that the actual time they work in each biweekly pay period equals the number of hours of their Basic Work Requirement (see A.6.b., below). Unless specifically prohibited in this Instruction, part-time employees may be participants.

b. Supervisors. Supervisors are responsible for monitoring the work hours of subordinates and for ensuring compliance with AWS program policy (see A.4., above). Within 15 calendar days of receipt of a written request for an AWS, supervisors will, in writing, approve, disapprove, or approve with modifications such request, taking into consideration the positive factor of improved employee morale, and the other criteria set forth in this Instruction. (See also B.2. RESPONSE TO REQUEST, below.)

c. Director of Human Resources. The Director of Human Resources is responsible for providing advice, assistance, and guidance to FLRA managers, supervisors, and employees on AWS program administration.

6. Definitions.

a. Alternative Work Schedules (AWS). AWS refers to both fixed and flexible work schedules as defined in this Instruction (see A.6.e. and A.6.f., below).

b. Basic Work Requirement (BWR). The BWR is the total number of hours in each biweekly pay period (80 hours) that a full-time employee is required to ***account for by means of hours worked, leave, or credit hours taken***. Regardless of the type of schedule a full-time employee works, 80 hours in a pay or leave status must be accounted for in each biweekly pay period. Part-time employees must account for the number of hours in each biweekly pay period required by their approved work schedule.

c. Work Time.

(1) Core Time. Core time for the FLRA is from 10:00 a.m. to 3:00 p.m., Monday through Friday. Employees must be in a work status during core time unless they are on an approved absence or a scheduled day off.

(2) Flexible Time Bands. Flexible time bands are the two bands of time before and after the core time defined in paragraph A.6.c.(1), above. The FLRA's morning flexible time band is from 6:30 a.m. to 10:00 a.m. The afternoon flexible time band is from 3:00 p.m. to 7:00 p.m. Employees on ***flexible work schedules*** can choose their arrival and departure times and can earn credit hours during the two flexible time bands. The FLRA does not control and cannot guarantee utilities necessary for climate comfort at the beginning and/or end of the flexible time bands; employees who choose to work during these hours do so with this understanding.

(3) Lunch Period. Work time does **not** include a lunch period.

d. Credit Hours. Credit hours are hours in excess of the employee's BWR. Credit hours can only be earned by an employee on a ***flexible work schedule***. Credit hours can be earned only Monday through Friday during the ***flexible time bands***. Credit hours are worked ***at the employee's election***. (See also D.2., below.) (Compare: Compensatory time off differs from credit hours as it results from overtime that is ***directed by the supervisor***.)

e. Fixed Work Schedules. There are 2 basic ***fixed work schedules*** from which employees may choose:

(1) Compressed Work Schedule. A compressed work schedule is a ***fixed work schedule*** in which the biweekly BWR is scheduled for and satisfied in less than 10 workdays. There are two compressed work schedules available to FLRA employees. One work schedule is the "5-4/9." Based upon a Monday through Friday workweek, the "5-4/9" compressed work schedule allows for one day off per biweekly pay period by working five days one week and four days the other week, with all but one of the days worked consisting of 9 hours, and the other day consisting of 8 hours. The other compressed work schedule is the "4/10." Based on a Monday through Friday workweek, the "4/10" compressed work schedule allows for one day off each week of a biweekly pay period by working four, hour days each week. Absent special circumstances, use of other compressed work schedules will not be approved.

Examples (illustrative only): (a) ["5-4/9"] FIRST WEEK: Monday through Friday, arrival time of 7:00 a.m., and departure time of 4:30 p.m.; SECOND WEEK: Monday through Wednesday, 7:00 a.m. to 4:30 p.m.; Thursday, 7:00 p.m. to 3:30 p.m.; and Friday off; or (b) ["4/10"] FIRST WEEK: Monday through Thursday, 8:30 a.m. to 7:00 p.m.; every Friday off in first week; SECOND WEEK: every Monday off in second week; Tuesday to Friday 8:30 a.m.

to 7:00 p.m. (4/10). *All examples assume a daily 30-minute lunch break.

Note: *These are **fixed work schedules**. Once the work schedule for the days and arrival and departure times is approved by the supervisor, the work schedule remains fixed until a different work schedule is approved by the supervisor. Likewise, while any workday in a biweekly pay period may be designated as the scheduled day off, once a scheduled day off has been approved by the supervisor, the designated day off remains fixed until a different work schedule is approved by the supervisor.*

(2) Fixed Tour Work Schedule. A fixed tour work schedule allows employees to establish a ***fixed work schedule*** based on their selection of a pattern of arrival times within the morning flexible time band. Full-time employees on fixed tour are scheduled to work Monday through Friday, 8 hours each day. (The daily hours for a part-time employee on fixed tour are dependent upon the employee's work schedule.) When requesting to work under a fixed tour work schedule, employees must specify their scheduled arrival times for each workday in the biweekly pay period. Once approved, employees must continue the fixed pattern of arrival times and work for 8 hours each day, until a different work schedule is approved by the supervisor. Employees may arrive up to 15 minutes after the scheduled arrival time without supervisory approval, provided the work schedule for that work day is extended by 15 minutes to satisfy the 8-hour work requirement. Other adjustments to scheduled arrival time must be approved by the supervisor.

Examples (illustrative only): (a) BOTH WEEKS: Mondays through Fridays, arrival time of 7:30 a.m., and departure time of 4:00 p.m.; (b) BOTH WEEKS: Mondays, 9:00 a.m. to 5:30 p.m.; Tuesdays through Fridays, 8:00 a.m. to 4:30 p.m.; or (c) FIRST WEEK: Mondays through Thursdays, 9:30 a.m. to 6:00 p.m.; and Fridays, 7:00 a.m. to 3:30 p.m.; SECOND WEEK: Mondays, 9:30 a.m. to 6:00 p.m.; and Tuesdays through Fridays, 8:30 a.m. to 5:00 p.m. *All examples assume a daily 30-minute lunch break.

Note: *These are **fixed work schedules**. Arrival times need not be uniform through each week, but once the schedule of arrival times is approved by the supervisor, the work schedule remains fixed until a different work schedule is approved by the supervisor.*

f. Flexible Work Schedules. Depending on the particular flexible work schedule approved by the supervisor, employees have the discretion, without prior approval by the supervisor, to change one or more of the following on a daily basis: (1) arrival time; (2) number of hours worked; and (3) departure time. (See D.1.h. "ROUND DOWN DAILY" RULE, below.) However, flexible work schedules may NOT vary the number of hours or days worked each week. There are two basic ***flexible work schedules*** from which employees may choose:

(1) Gliding Work Schedule. This ***flexible work schedule*** is similar to the fixed tour work schedule except employees may, on a daily basis without prior supervisory approval, vary arrival times within the morning flexible time band. A full-time employee on a gliding work schedule is scheduled to work 8 hours each day and 40 hours each week. The daily work hours for a part-time employee on a gliding work schedule are dependent upon the employee's work schedule.

Example (illustrative only): A full-time employee who arrives for work anytime during the morning flexible time band of any work day could fulfill the fixed 8-8-8-8-8 hour Monday through Friday work schedule for each week of a biweekly pay period by: FIRST WEEK: Monday, arriving at 8:00 a.m. and departing at 4:30 p.m.; Tuesday, 9:30 a.m. to 6:00 p.m.; Wednesday, 8:15 a.m. to 4:45 p.m.; Thursday, 7:30 a.m. to 4:00 p.m.; and Friday, 7:45 a.m. to 4:15 p.m; SECOND WEEK: Monday, 9:30 a.m. to 6:00 p.m.; Tuesday, 7:45 a.m. to 4:15 p.m; Wednesday and Thursday, 8:15 a.m. to 4:45 p.m.; and Friday, 7:00 a.m. to 3:30 p.m. *The example assumes a daily 30-minute lunch break.

Note: *This is a **flexible work schedule**. Once the supervisor approves the employee's request for working under a gliding work schedule, the employee is not required to obtain approval of day-to-day changes of arrival times within the morning flexible time band. It is further emphasized that employees on a gliding work schedule are responsible for ensuring that the requisite number of hours in their workday is satisfied by means of hours worked, leave, or credit hours used.*

(2) Variable Day Work Schedule. This ***flexible work schedule*** incorporates the features of the gliding work schedule with the added feature of allowing full-time employees to ***vary the number of hours worked each day*** as long as: (1) all days in a biweekly pay period are scheduled for work, leave, or credit hours; (2) each day includes work, leave, or credit hours taken to account for the core time; (3) no day exceeds 12 hours of scheduled work; and (4) the total hours accounted for (by means of hours worked, leave, or credit hours used) must equal 80 hours in each biweekly pay period. (Part-time employees on a variable day work schedule must account for the number of weekly hours required by their approved work schedule.)

Example (illustrative only): Work a 6-7-8-9-10 hour schedule Monday through Friday for the first week, and work a 6-8-9-9-8 hour schedule Monday through Friday for the second week with a ***flexible work schedule*** of arrival and departure times for each day. FIRST WEEK: Monday, arriving at 9:00 a.m. and departing at 3:30 p.m.; Tuesday, 9:00 a.m. to 4:30 p.m.; Wednesday, 9:30 a.m. to 6:00 p.m.; Thursday, 9:00 a.m. to 6:30 p.m.; and Friday, 8:00 a.m. to

6:30 p.m.; SECOND WEEK: Monday, 9:30 a.m. to 4:00 p.m.; Tuesday, 9:15 a.m. to 5:45 p.m; Wednesday and Thursday, 8:45 a.m. to 6:15 p.m.; and Friday, 9:30 a.m. to 6:00 p.m. *The example assumes a daily 30-minute lunch break.

Note: *This is a **flexible work schedule**. Once the supervisor approves the employee's request for working under a variable day work schedule, the employee is not required to obtain approval of day-to-day changes of arrival times within the morning flexible time band. It is further emphasized that employees on a variable day work schedule are responsible for ensuring that the requisite number of hours in their workday is satisfied by means of hours worked, leave, or credit hours used.*

B. REQUEST AND APPROVAL.

1. Request. Employees who desire to work on a fixed or flexible work schedule must submit the Work Schedule Selection Form (Attachment No. 1 of this Instruction) to their immediate supervisor. The request must describe the particular work schedule desired. Employees must receive their supervisor's approval before working under an AWS.

2. Response to Request. Before approving an AWS for an employee, a supervisor must determine which of the schedules described in this Instruction is being requested by the employee, because rules on holidays, overtime and premium pay, credit hours, and timekeeping requirements differ for each type of work schedule. The supervisor must document this determination to avoid later confusion in the application of these rules. The supervisor and the employee are encouraged to discuss informally the impact of a proposed work schedule on work requirements. Within 15 calendar days of receipt of the Work Schedule Selection Form, the supervisor will approve, disapprove, or approve it with modifications, in writing. In making this decision, the supervisor must consider the policy criteria in A.4. INTRODUCTION AND POLICY, above, and the positive factor of improved employee morale. After the impact on employee work requirements has been resolved, conflicts in proposed work schedules among bargaining unit employees will be resolved based on FLRA seniority, and, in the event of a tie, based on U.S. Government seniority. The supervisor is responsible for ongoing review of the employee's use of AWS to ensure that the duties and requirements of the employee's position are fulfilled. The supervisor will suspend an employee's participation in AWS for the duration of an pportunity-to-improve-performance period, and for a further period of time, as necessary, until the supervisor determines that the employee's performance has met the Fully Successful level. Disapproval of an eligible employee's request, or involuntary termination of an approved AWS, shall be based only on the following criteria:

a. Disruption in carrying out office functions / providing customer service. The proposed or previously approved AWS does not meet the office's current needs for coverage at

reasonable times to provide customer service. **Example (illustrative only):** If a particular office needs employee coverage beginning at 8:30 a.m. but all of the proposed schedules begin at 9:00 a.m. or later, then one or more of the proposed schedules would not be approved in accordance with the procedures described in B.2., above; or

b. Abuse of the AWS privilege. **Example (illustrative only):** It is an abuse of the AWS privilege for an employee on a ***flexible work schedule*** to falsify the arrival and/or departure time on the sign-in and sign-out record. (See D.1.b. SIGN-IN and SIGN-OUT., below.)

3. Alternative Dispute Resolution Process. Any employee whose request for an AWS has been denied or modified, or whose AWS has been involuntarily terminated or modified involuntarily, may invoke the following Alternative Dispute Resolution (ADR) process:

a. A meeting between the parties (the employee and the supervisor), either face to face or telephonically, will be arranged to attempt to resolve the dispute.

b. The meeting will include a facilitator and the parties.

c. The parties will meet at mutually agreeable times to attempt to resolve the dispute.

d. Offers to settle and aspects of settlement discussions will not be used as evidence or referred to if the matter is not resolved by this process.

e. If the matter is resolved, the parties agree to immediately implement any agreements.

f. If the matter is not resolved, the matter may be processed through the appropriate process described below.

g. This process will be completed within 10 days unless mutually agreed otherwise.

h. If the dispute remains unresolved following use of the ADR process, non-bargaining unit employees may grieve through the FLRA's administrative grievance procedure, and bargaining unit employees may grieve through the FLRA/UAE negotiated grievance/arbitration procedure. ***Use of the ADR process will toll time limits for the filing of a grievance or complaint.***

4. Changes to Approved Work Schedules. An employee may request a different AWS

at any time. Normally, changes should be limited to quarterly intervals to keep the AWS program manageable. A supervisor may approve temporary schedule variances if needed. The need for frequent changes may indicate that a more flexible schedule would be appropriate. When a supervisor determines that it is necessary to change or to involuntarily terminate an employee's AWS (see B.2., above), the supervisor shall provide the employee reasonable advance notice of the proposed action, and the reasons for it.

5. Sanctions for Abuse of AWS Privilege. Employees who abuse AWS will be subject to sanctions such as imposition of stricter time accounting methods, disqualification from continued participation in the AWS program, and/or appropriate disciplinary measures.

C. DOCUMENTATION / RECORD MAINTENANCE. The advantages of AWS require additional timekeeping and supervisory approval controls to ensure sufficient office coverage. Supervisors shall maintain files on written approvals and subsequent approved changes of the employee's AWS, and written records of credit hours earning and use. Approvals are required (but not necessarily in writing) for credit hours to be earned and used and before non-workdays can be substituted for leave. The supervisor shall maintain a record of any documentation that the supervisor believes is necessary to support the employee's time and attendance under an AWS and to provide an adequate "audit trail" for any review of the AWS program that is appropriate.

D. TIME AND ATTENDANCE. The following provides guidance for the administration of the FLRA AWS program:

1. General Administration.

a. Time Accounting.

(1) Supervisors. Supervisors must establish and maintain a time accounting system for all employees on a work schedule that has been approved under the provisions of this Instruction.

(2) Participants in the AWS Program. Employees on ***flexible work schedules*** or on ***fixed work schedules*** must account for all scheduled work hours. If the number of hours actually worked is fewer than the number of hours the employee is scheduled to work, the employee must make up the resulting deficiency in scheduled work hours, by working the deficient hours during the same pay period, by taking appropriate leave during the same pay period, or by both actions. (See A.6.b., above.)

b. Sign-In and Sign-Out. Employees who elect a ***flexible work schedule***

(gliding or variable day) must enter their arrival and departure times on the Daily Sign-In / Sign-Out Record (Attachment No. 2 of this Instruction). These employees record their arrival and departure times by signing-in and signing-out in chronological sequence. Employees who elect a ***fixed work schedule*** (compressed or fixed tour) DO NOT sign-in and sign-out, but must commit in writing to adhere to the work schedule approved by their supervisor before the schedule is implemented.

c. Scheduling Arrival and Departure Times. AWS provides the option of varying arrival and departure times within the flexible time bands, consistent with the duties and requirements of the employee's position and the needs of the office. Employees under a fixed work schedule must schedule their arrival and departure times in 15-minute intervals from the hour. Employees on gliding or variable day work schedules may arrive at any time within the morning flexible time band, and depart at any time within the afternoon flexible time band.

d. Work Schedules for Employees in Travel Status. Employees on ***flexible work schedules*** who are in travel status at the beginning and/or end of a day must maintain an individual copy of the Daily Sign-In / Sign-Out Record. For each pay period during which they are subject to this individual record-keeping requirement, employees must submit their individual daily records to their supervisors for certification.

Example for *flexible work schedule* (illustrative only): A full-time employee who is in travel status and who is scheduled to work 8 hours on a certain day based on a ***flexible work schedule***, but who completes the work for the day in 7 hours, will note the discrepancy in his or her individual daily record and will make up the resulting 1-hour deficiency in scheduled work hours by working the 1 hour during the same pay period, by taking appropriate leave during the same pay period, or by taking both actions. For each pay period during which they are subject to the individual record-keeping requirement, employees must submit their individual daily records to their supervisors for certification.

Example for *fixed work schedule* (illustrative only): A full-time employee who is in travel status and who is scheduled to work 9 hours on a certain day based on a compressed work schedule, but who completes the work for the day in 7 hours, will make up the resulting 2-hour deficiency in scheduled work hours by working the 2 hours during the same pay period, by taking appropriate leave during the same pay period, or by taking both actions. However, there is no requirement for an employee on a ***fixed work schedule*** to keep an individual daily record while in travel status.

Note: *The foregoing examples are* **not** *related to the issue of* ***administratively controllable travel****. Travel outside an employee's normal duty hours is not considered hours of work unless it meets the requirements of 5 C.F.R. 550.112(g).* ***For example,***

travel on a Sunday to interview witnesses, or to attend a training event scheduled for the following Monday, is scheduled or controlled administratively and, therefore, is not overtime work. (See D.6.a. OVERTIME, below.) *However, to the extent practicable, travel is to be scheduled during an employee's duty hours.*

e. Work Schedules for Employees Delivering or Receiving Training. Employees on an AWS who are also scheduled for training must conform their work schedules to the hours of training as explained below:

(1) Training for 3 or fewer days. If the scheduled training does not exceed 3 days, an employee may continue AWS for the remainder of the pay period. **Example (illustrative only):** An employee on a variable day work schedule has 3 days of training scheduled for Tuesday, Wednesday, and Thursday of the last week of a pay period. For the 3 days of training, the employee's work schedule must conform to the hours and arrival and departure times of the training schedule. As an example, the employee's work schedule for the week which includes the training could be a 10-8-8-8-6 hour schedule, where the 8-8-8 hour schedule represents the 3 days of training. Employees on a compressed work schedule must conform their work schedule to the hours and arrival and departure times of the training schedule. In doing so, an employee must ensure that he or she meets the required 80-hour BWR for the pay period. If the employee's scheduled day off falls on a training day, the day off must be rescheduled to another day within the same pay period. If the employee's scheduled 9- or 10-hour day(s) falls on 1 or more training days, the scheduled work hours in excess of the training may be rescheduled to another day(s) within the same pay period. This may result in the employee working 1 or more 10-, 11-, or 12-hour days to meet the 80-hour BWR for the pay period. In either case, the employee must ensure that the BWR is met by hours worked or leave taken. Alternatively, the employee may choose to forego the compressed work schedule for the entire pay period.

(2) Training for more than 3 days. If the scheduled training for an employee on an AWS is for more than 3 days, the employee's AWS is suspended for the entire pay period, and the work schedule reverts back to a fixed schedule of five 8-hour days per week of the pay period.

(3). Conforming work schedules. Employees who are scheduled to deliver or receive training are expected to conform their work schedules to the hours necessary to complete their work, and prior approval should be received before an employee leaves a training ending outside of an employee's core hours or normally scheduled departure time.

f. Work Schedules for Employees on Temporary Duty. Employees on a temporary duty assignment, such as a detail within the FLRA, can expect to maintain their AWS

work schedule, absent special work schedule considerations in the office to which they have been assigned. It is expected that the employee on an AWS and the supervisor of the detail office will agree on a work schedule for the employee that accommodates, to the maximum extent possible, the employee's established AWS and the mission of the detail office.

g. Maximum of 12 Hours Scheduled Per Day. No more than 12 hours of work may be scheduled in one day, excluding lunch, in order to avoid the possibility of fatigue and reduced productivity. Exceptions must be supported by special circumstances, and must be approved in advance by the employee's supervisor.

h. "Round Down Daily" Rule. This rule is used for computing daily or partial hours. The rule requires that the entire time period claimed as hours of work be worked -- no rounding up is allowed. Thus, in order to earn a partial credit hour, an employee must work a full 15-minute increment. Employees cannot carry-over any minutes worked that do not constitute a full 15-minute increment. **Example (illustrative only):** An employee under a gliding work schedule who works an additional 29 minutes (within the afternoon flexible time band) beyond the 8-hour daily work requirement will be credited for a ¼ credit hour, rather than for a ½ credit hour.

2. Earning/Using Credit Hours.

a. Eligibility. Credit hours may be earned only by employees working under a ***flexible work schedule*** (gliding or variable day). Credit hours may NOT be earned by employees working under a ***fixed work schedule*** (compressed or fixed tour).

b. Earning Credit Hours. As defined in paragraph A.6.d., above, credit hours are hours in excess of the employee's BWR.

(1) Earned at the Employee's Election. Employees may earn credit hours Monday through Friday only during the ***flexible time bands***, and in increments of no less than ¼ hour (15 minutes). Employees may earn a maximum of two credit hours per workday and a maximum of 20 credit hours in a biweekly pay period. Credit hours may be earned only in the performance of assigned and necessary work.

(2) Supervisory Approval for Earning. Unless in a travel status, employees must notify their supervisor of the intent to earn credit hours. At the supervisor's discretion, supervisory approval may be required before an employee can earn credit hours. If supervisory approval is required, the approval will be based on workload requirements. An exception to the notification/approval requirement could be based on the following: **Example (illustrative only):** If an employee is taking an affidavit, it is expected that the employee will finish

taking the affidavit rather than interrupting that process in an attempt to notify the supervisor and secure approval for credit hours.

c. Maximum Carry-Over. Subject to D.2.e. COMPENSATION, below, full-time employees may carry from pay period to pay period up to 24 credit hours. A part-time employee may carry forward to the next biweekly pay period an amount of credit hours equal to ¼ of the hours in the employee's biweekly BWR.

d. Using Credit Hours. Employees may use earned credit hours in lieu of annual or sick leave. Credit hours may NOT be used prior to the time they are earned to cover absences during core hours. Credit hours also may NOT be used to qualify an employee for premium pay. Use of credit hours to cover periods of absence will be administered in the same manner as use of annual and sick leave. Supervisory approval is required before credit hours may be used.

e. Compensation. Payment for a balance of unused credit hours occurs when an employee working under a flexible work schedule either leaves the agency, or changes to a fixed work schedule. In those circumstances, the employee is entitled to compensation for unused credit hours. Payment for credit hours is made for the biweekly pay period in which they are used. To the maximum extent possible, the supervisor and the employee should plan work schedules so that the employee has no remaining balance of credit hours at the time the employee either leaves the agency, or changes to a fixed work schedule.

f. Annual Leave "Use or Lose". A credit hour balance is not a valid justification for carrying over "use or lose" annual leave. Therefore, employees should schedule annual leave usage before credit hour usage when they are in a "use or lose" situation.

3. Sick/Annual Leave. The maximum amount of sick or annual leave charged to the employee is equal to the number of hours the employee is scheduled to work. However, for an employee working under the variable day work schedule, the minimum charge of sick or annual leave for any work day is 5 hours, which is the minimum amount of time the employee is required to be in a work status in any one work day. (See A.6.f.(2), above.) When an employee working under a compressed work schedule is scheduled to take approved leave (sick or annual) on a workday, the employee may, upon written approval of the employee's supervisor, substitute the employee's scheduled day off for the absence instead of the employee's leave account being charged. Upon obtaining this written approval, the employee must provide a copy to the employee responsible for the office's Time and Attendance records. In the absence of such notice, the employee must be charged the appropriate leave for the number of hours scheduled but not worked.

4. Excused Absence/Emergency Leave. When employees are excused from duty for a

whole or part day because of weather conditions, building security (emergency closing), or other reasons (military leave, court leave, etc.), the amount of leave to be granted will be based on: (1) the employee's normal work schedule; and (2) as a point of reference, the FLRA's regular hours of work (8:30 a.m. to 5:00 p.m.).

5. Holidays.

a. Compressed Work Schedule. Employees under a compressed work schedule whose "predetermined and approved day-off" falls on a Federal legal holiday are given an "in lieu of" holiday: (1) if the official holiday falls on a Friday, the "in lieu of" holiday is the preceding Thursday; (2) if the official holiday falls on a Monday, the "in lieu of" holiday is the following Tuesday; and (3) if the official holiday falls on Tuesday, Wednesday, or Thursday, the "in lieu of" holiday is the day before the official holiday. Employees under a compressed work schedule, who, by reason of a Federal legal holiday, are prevented or relieved from working are entitled to pay for the number of hours not worked. Employees under a compressed work schedule are entitled to holiday pay if they are scheduled by management to work on a Federal legal holiday, or on an "in lieu of" holiday.

b. Flexible Work Schedule. Full-time employees under a flexible work schedule, who, by reason of a Federal legal holiday, are prevented or relieved from working are entitled to pay for the number of hours not worked, up to a maximum of 8 hours. Accordingly, for any biweekly pay period which includes a Federal legal holiday, full-time employees must schedule a sufficient number of hours (normally 72 hours) in "pay status" (work hours, leave, or credit hours taken) in the other days of the biweekly pay period in order to meet their BWR for the biweekly pay period. Employees under a flexible work schedule are entitled to holiday pay if they are scheduled by management to work on a Federal legal holiday.

c. Part-Time Employees. Part-time employees whose workday falls on a Federal legal holiday and, as a result, are prevented or relieved from working are entitled to pay for the number of hours scheduled for work on that day, not to exceed 8 hours. Part-time employees are NOT entitled to pay or to an "in lieu of" holiday when a holiday falls on a non-work day.

6. Overtime, Compensatory Time Off, and Night Differential.

a. Overtime. Overtime work and the compensation for such work are governed by FLRA Instruction 3530.1. For the purposes of this AWS Instruction, the following provisions also apply: For employees on a fixed tour work schedule, or a flexible work schedule, overtime is the number of hours the employee is directed by the supervisor to work in excess of 8 hours in a day, or 40 hours in a week, but does not include credit hours. For employees on a compressed work

schedule, overtime is the number of hours the employee is directed by the supervisor to work in excess of those specified hours which constitute the compressed work schedule.

b. Compensatory Time Off. In lieu of overtime pay, compensatory time off may be granted. Compensatory time off may be used in combination with, or in lieu of, approved credit hours. ***Compensatory time off differs from credit hours in that it results from work that is directed by the supervisor.***

c. Night Differential. Night differential is not authorized for any time worked past 6:00 p.m. if it occurs because an employee: (1) has elected to work under an AWS tour of duty which includes time after 6:00 p.m.; or (2) elects to work credit hours.

E. TRAINING. The Human Resources Division is responsible for training all current and new managers, supervisors, and employees in the AWS program. A copy of this Instruction and any forms will be furnished to all trainees. All current managers, supervisors, and employees will be trained in the AWS program before it is implemented. All new managers, supervisors, and employees will be trained in the AWS program before they may participate in the program.

F. EVALUATION. The AWS program will be periodically evaluated to ensure that it is in conformance with A.4. INTRODUCTION AND POLICY, above, and with F.3. EVALUATION CRITERIA, below.

1. Responsibilities.

a. Human Resources Division. Upon request of the Authority Chair, Members, General Counsel, FSIP Chair and/or the FLRA Labor-Management Forum, the Human Resources Division will generate the necessary data (for example, by periodic questionnaires to managers, supervisors, and employees who are participating in, or who administer, the AWS program) on the AWS program to enable the FLRA Labor-Management Forum to evaluate the program.

b. The FLRA Labor-Management Forum. The FLRA Labor-Management Forum will evaluate the AWS data received from the Human Resources Division and prepare a report and recommendations to the Authority Chair and Members, the General Counsel, the FSIP Chair, and the UAE.

2. Frequency of Evaluation. The FLRA Labor-Management Forum's evaluation will be submitted to the Authority Chair and Members, the General Counsel, the FSIP Chair, and the UAE as often as requested and/or warranted.

3. Evaluation Criteria. The AWS program will be evaluated from two perspectives -- program improvement and work schedule termination.

a. Program Improvement. It is anticipated that the AWS program as a whole, and particular work schedule offerings within the program, will require adjustments from time-to-time to ensure that it is in conformance with A.4. INTRODUCTION AND POLICY, above, and with the criteria below. Recommendations for program and work schedule adjustment will be based on a comparison of the AWS data received from the Human Resources Division against the criteria below, and then identifying specific changes necessary to better meet the criteria. The difficult but necessary task is to filter out all variables other than the work schedules that have an impact on the criteria. As the program should offer participants the maximum flexibility consistent with the mission requirements of the Agency, the FLRA Labor-Management Forum may recommend more flexible work schedules if they can be justified.

(1) Mission requirements. The following factors will be considered: (a) neutral or positive impact on productivity in terms of the Agency, component, office, and individual; (b) promote enhanced service to customers external to the Agency with a concomitant positive public perception, by extended office coverage; (c) neutral or positive impact on coverage, availability, and timeliness regarding service to customers internal to the Agency; and (d) neutral or positive impact on the quality of service to all customers internal or external.

(2) Management flexibility. The following factor will be considered: neutral or positive impact on the ability of supervisors and managers to respond to the need for change in routine operations, and to extraordinary situations.

(3) Work environment. The following factors will be considered: (a) neutral or positive impact on a shared sense of accountability, responsibility, open communication, and accommodation for the sake of both the mission and individual needs among all managers, supervisors, and employees; and (b) positive impact on employee morale.

(4) Management of the AWS program. The following factors will be considered: (a) neutral or positive impact on AWS program participants' compliance with the BWR (including arrival and departure times, and use of lunch periods, break periods, and sick leave), and on the incidence of discipline for abuse of such considerations; (b) simple yet effective time accounting systems; and (c) balancing the ease of AWS program management with providing participants the maximum variety of options.

b. Work Schedule Termination. A specific work schedule option will be terminated for the Agency, a component, or an office only if there is evidence showing that the work

schedule option in question is causing an "adverse impact" as defined in 5 U.S.C. § 6131(b). "Adverse impact" means: (1) a reduction in the productivity of the Agency, a component, or an office; (2) a diminished level of services furnished to the public by the Agency, a component, or an office; or (3) an increase in cost of the operations of the Agency, a component, or an office (other than a reasonable administrative cost relating to the process of establishing and administering the work schedule in question).

This Instruction is effective on December 1, 2011.

Sonna Stampone 11.30.11

Sonna Stampone
Executive Director

.FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

SUBJECT: CAREER TRANSITION ASSISTANCE PLANS

SUBJECT: CAREER TRANSITION ASSISTANCE PLANS

Chapter I. General

A. **Purpose.** The purpose of this Instruction is to describe the Federal Labor Relations Authority's (FLRA) Reemployment Priority List (RPL) (Chapter II of this Instruction), its Career Transition Assistance Plan (CTAP or Plan) (Chapter III of this Instruction) and the FLRA's responsibilities for implementing the Interagency Career Transition Assistance Plan for Displaced Employees (ICTAP) (Chapter IV of this Instruction). This Plan covers transition assistance and priority selection for well qualified surplus and displaced FLRA employees in both the competitive and excepted services; rehiring priority for involuntarily separated FLRA employees through the RPL consistent with the requirements in 5 CFR 330.201 Subpart B; and priority selection to well qualified, displaced competitive service employees in the local commuting area from other Federal agencies who apply for vacancies in the local commuting area.

B. **Scope.** The provisions of this Instruction apply to all FLRA components and offices.

C. **References.**

1. Presidential Memorandum, Subject: Career Transition Assistance for Federal Employees, dated September 12, 1995;

2. 5 CFR 330, Subparts B, C, F and G, Reemployment Priority List, Placement Assistance Programs for Displaced Employees, and Agency and Interagency Career Transition Assistance Plan Regulations, respectively;

3. FLRA Instruction 3300, Competitive Service and In-Service Placement;

4. FLRA Instruction 3302, Attorney Recruitment and In-Service Placement;

5. FLRA/UAE Labor-Management Agreement; and

6. FLRA Instruction 3315, Reduction-in-Force and Furloughs for Over 30 Days.

D. **Effective Date.** This Instruction is effective immediately and will remain in effect through September 30, 1999, unless the Office of Personnel Management (OPM) further extends it because of continued severe Federal downsizing.

E. **Policy.** FLRA's policy is to help its surplus and displaced employees find other employment within the FLRA, in other Federal agencies, or in the private sector. FLRA provides selection priority to its own well qualified competitive service and excepted service displaced employees, and to well qualified competitive service displaced employees from other Federal agencies in the local commuting area who apply for FLRA vacancies. In accordance with regulatory criteria, the FLRA will:

1. Provide career transition services to all FLRA surplus and displaced employees;

2. Provide special selection priority to FLRA eligible surplus and displaced employees in both the excepted and competitive services and to eligible, well qualified competitive service employees who are displaced from other Federal agencies in the local commuting area;

3. Encourage and allow its surplus and displaced employees, in Tenure Groups I (career status) and II (career-conditional or trial status), to use the full range of career transition services available to them in their local areas, to include the Interagency Career Transition Assistance Center for agency employees located in the Washington, D.C. metropolitan area; and

4. Maintain an RPL to provide rehiring priority to eligible displaced competitive service and excepted service FLRA employees who are no longer on the FLRA rolls due to reduction-in-force or compensable injury, or disability retirement that is being discontinued.

F. **Responsibilities.**

1. FLRA management, including supervisors and managers at all levels, support the objectives of the CTAP and comply with OPM and FLRA instructions and procedures designed to provide placement assistance to surplus and displaced FLRA competitive and excepted service employees and to displaced competitive service employees from other Federal agencies in the commuting area.

2. The Director of Human Resources or designee is responsible for: (1) developing the Agency's CTAP; (2) conducting or arranging briefings on the use of the services for managers, union officials, supervisors, and employees; (3) providing guidance; (4)

monitoring the delivery of transition assistance services provided by other sources as appropriate; (5) establishing procedures for special selection priority for eligible FLRA and other Federal agency employees; (6) creating and maintaining the FLRA RPL; (7) providing leadership in identifying sources of career transition information and services and informing FLRA employees of these resources; (8) directing activities related to issuing Certifications of Expected Separation and planning and conducting reduction-in-force; (9) arranging for on-site Employee Assistance Program (EAP) counseling, as requested by eligible employees; (10) advertising all competitive service vacancies on OPM's electronic bulletin board, posting announcements on bulletin boards, and making appropriate distribution of vacancy announcements; (11) notifying FLRA surplus and displaced employees of all vacancies within FLRA via e-mail or other appropriate sources; (12) ensuring that decisions that otherwise eligible employees are determined to be not well qualified for FLRA vacancies are thoroughly documented; (13) circulating the applications of eligible employees throughout FLRA and to other Federal agencies as appropriate; and (14) arranging reasonable accommodation for eligible FLRA disabled employees, upon their request, so that they may take advantage of career transition services and facilities and receive special selection priority within the provisions of this Instruction.

3. Eligible employees are responsible for making use of FLRA career transition services and facilities and, when appropriate, submitting the supporting documentation required to receive special selection priority. Employees are also responsible for providing proof of eligibility when applying for vacancies and for submitting resumes or applications which address the specific knowledge, skills and abilities required for a position.

4. The Employee Assistance Program provides counseling and assistance, within the scope of the FLRA's contract, to FLRA employees and their families to cope with stress and other difficulties associated with displacement. FLRA will obtain services for employees located at remote sites through appropriate means.

G. **Training.** The Human Resources Division (HRD) provides appropriate training to FLRA employees, union officials, managers, and supervisors regarding the FLRA and the Interagency program procedures and career transition services available.

Chapter II. Reemployment Priority List (RPL)

A. Responsibilities for Establishing and Registering.

1. Establishing the RPL. The RPL is a mechanism to give reemployment consideration to

former FLRA employees who have been separated by RIF or fully recovered from a compensable injury one year under either the Worker's Compensation Program or disability retirement. In accordance with 5 CFR 330, Subpart B, the FLRA establishes and maintains an RPL for each commuting area. The HRD establishes and maintains the list. Upon written request from employees, the HRD enrolls eligible employees up to 6 months in advance of a reduction-in-force.

The HRD places an employee on the RPL no later than 10 calendar days after receipt of the employee's written request. The HRD provides employees appropriate advance written notice of RPL offers.

2. Registering for the RPL. In order to be placed on an RPL, an employee must notify the HRD in writing, as follows:

   a. This notification must state the conditions under which the employee will accept employment (including grade, occupation and minimum hours of work per week); and

   b. The employee must submit this notification no later than 30 calendar days after the reduction-in-force separation date or after the date that disability compensation benefits are terminated. Should an employee fail to submit a timely notification, he or she will not be entitled to be placed on the RPL.

B. **Employee Eligibility.** In order to apply for the RPL, an employee must meet all of the following conditions:

1. Be serving or have served before the disability compensation was approved under a competitive or excepted service appointment in Tenure Groups I or II;

2. Have received a performance rating above "unacceptable" as the last annual performance rating of record;

3. Have received a specific notice of separation or a Certification of Expected Separation under reduction-in-force, or have written certification that disability-related compensation is ceasing or has ceased;

4. Have not declined an offer under this Instruction of a position with a representative rate at least as high as that of the position from which the employee was or will be separated;

5. Full-time and other-than-full-time employees are eligible for reemployment priority.

However, full-time employees are considered only for full-time positions and other-than-full-time employees are only considered for other-than-full-time positions, in accordance with 5 CFR 330.206(a); and

6. A retired member of a uniformed service who does not have veteran's preference in reduction-in-force actions does not have veteran's preference on the RPL.

C. **Duration of Eligibility.**

1. Tenure Group I Employees - The name of a Tenure I employee remains on the RPL for two years from the date the employee is entered on the list.

2. Tenure Group II Employees - The name of a Tenure II employee remains on the RPL for one year from the date the employee is entered on the list.

D. **Loss of Eligibility.** Declination of a nonpermanent employment offer has no effect on RPL eligibility of consideration. When an individual declines an offer of career, career-conditional, or excepted appointment without time limit, or fails to reply to an inquiry, and the position meets the acceptable conditions shown in the individual's application, he or she loses RPL consideration for all positions with a representative rate at or below the grade that was offered. However, the individual retains eligibility for positions with a higher representative rate up to the last grade held.

Also, an individual is removed from the RPL before the period of eligibility expires when the individual:

1. Requests removal;

2. Receives a career, career-conditional, or excepted appointment without time limit in any agency;

3. Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to respond to an inquiry by the employee's former agency, concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or will be separated;

4. Separates (i.e., by retirement or resignation) before the RIF separation would take place. An employee who retires on or after the RIF separation date does not lose RPL eligibility; or

5. Declines an interview or fails to appear for a scheduled interview only if notified in

advance of this requirement and the subsequent consequences.

E. **Agency Responsibilities Regarding Individual Eligibility.**

1. If FLRA removes an individual from the RPL because of the individual's failure to reply to a specific permanent job offer or an inquiry of availability for a specific permanent vacancy, the Agency must have evidence to show that a written offer was made (e.g. a Postal Service "return receipt signed by addressee only.") The Agency must make clear in the offer or inquiry that the individual's failure to respond will result in loss of RPL consideration for that grade or higher grades, if eligible.

2. If FLRA cannot reach an individual on the RPL regarding a job offer, the Agency may discontinue consideration of that individual until the individual submits an updated application to reinstate RPL eligibility. If this happens, the Agency reinstates the individual's eligibility only for the period of time remaining of the original eligibility period.

3. Agency's must register employees who agreed to transfer with their function --but who are separated by RIF from the gaining competitive area -- on the RPL of the gaining competitive area.

Chapter III. FLRA Career Transition Assistance Plans

A. **Purpose.** This Chapter implements the President's memorandum of September 12, 1995, to establish agency career transition assistance plans for Federal employees during this period of severe downsizing. It also implements the requirements of 5 CFR 330, Subpart F. FLRA policy is to help its surplus and displaced competitive service and excepted service employees take charge of their own careers and find other job offers within the Federal government, other governments, or in the private sector.

B. **Definitions.**

1. Commuting Area means the geographic area that usually constitutes one area for employment purposes as determined by the Agency. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual

employment.

2. Displaced employee has the 5 CFR 330.604 meaning of current FLRA General Schedule employees serving under an appointment in the competitive service, in Tenure Groups I and II, who have received a specific reduction-in-force (RIF) separation notice or notice of proposed separation for declining a management directed reassignment or transfer of function outside of the local commuting area. The FLRA also includes Schedule A and B excepted service employees in Tenure Groups I and II in its internal definition of displaced employee. Displaced employee also includes a current Executive Branch employee in the excepted service, serving on an appointment without time limitation, at grades GS-15 or equivalent and below, who has noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, who are in receipt of such notices.

3. Eligible Employee refers to an employee or previous employee who meets the definitions set forth in this Instruction for surplus and displaced employees and who also meets the following conditions:

   a. Has a current performance rating of record of at least 5 CFR 430 level 3 or equivalent;

   b. Applies for a vacancy that is at or below the grade or representative rate of the position from which the employee may be or is being separated that does not have greater promotion potential than the position from which the employee is being or may be separated;

   c. Is surplus and occupies or was displaced from a position in the same local commuting area of the vacancy;

   d. Files an application for a specific vacancy within the deadline established by FLRA; and

   e. Is determined by FLRA to be well-qualified for the specific vacancy for which application is made.

4. Special Selection Priority is the priority given to FLRA competitive service and excepted service surplus and displaced employees, to former employees registered on the RPL, and to other Federal agency competitive service displaced employees in the same commuting area who meet eligibility requirements and are determined to be well qualified for a specific vacancy.

5. Surplus employees are current FLRA General Schedule competitive service and Schedule A and B excepted service employees--in Tenure Groups I and II--who are facing displacement through anticipated RIF, internal reorganization, or realignment and who have received a Certificate of Expected Separation, a notice of discontinued service retirement eligibility, or a proposed notice of separation for failure to accept a management directed reassignment or transfer of function outside of the local commuting area. This definition also includes current Executive Branch employees serving on excepted service appointments without time limits in the General Schedule or equivalent who have statutory rights to noncompetitive appointment eligibility and special selection priority for positions in the competitive service.

6. Vacancy means a competitive service (or FLRA excepted service) vacant position lasting 121 days or longer, including extensions, which the Agency is filling, regardless of whether the Agency advertises the vacancy.

7. Well-Qualified employee means an eligible employee who possess the knowledge, skills, and abilities which clearly exceed the minimum qualification requirements for the position. A well qualified employee must meet the following criteria:

   a. Meets the basic qualifications standards and eligibility requirements for the position, including any medical qualification, suitability, and minimum educational and experience requirements;

   b. Satisfies one of the following qualification requirements:

      (1) Meets all selective factors if applicable. Meets appropriate quality rating factor levels as determined by FLRA. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) that the eligible employee is or is not considered to be well qualified; or

      (2) Is rated by FLRA to be above minimally qualified in accordance with specific rating and ranking procedures. Generally, this means that the individual may or may not meet the Agency's test for "highly" or "best" qualified, but would exceed the minimum qualifications for the position;

   c. Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

d. Meets any special qualifying condition(s) that OPM has approved for the position; and

e. Is able to satisfactorily perform the duties of the position upon entry.

C. **Effective Date of Eligibility.** FLRA employees become eligible for special priority selection on the date that FLRA issues a RIF separation notice, a proposed separation notice for declining a management directed reassignment or transfer of function outside of the local commuting area, or a Certificate of Expected Separation, whichever is earliest. FLRA will issue eligible employees Certificates of Expected Separation as early as possible to enable the employees to immediately qualify for programs under the Job Training Partnership Act administered by the Department of Labor.

D. **Expiration of Eligibility.** FLRA employees lose priority selection eligibility on the earliest of:

1. RIF separation date or the date of separation under adverse action procedures for declining a management directed reassignment or transfer of function to another local commuting area;

2. Cancellation of the RIF separation notice, notice of proposed separation under adverse actions for failure to accept a management directed reassignment or transfer of function outside of the local commuting area, or Certification of Expected Separation;

3. When an eligible employee receives a career, career-conditional, or excepted appointment without time limit in any agency;

4. When an eligible employee resigns; or

5. When an eligible FLRA employee declines a career, career conditional, or excepted service appointment (without time limit), for which the employee has applied and been rated well qualified.

E. **Covered Personnel Actions.** FLRA will consider its displaced and surplus employees before filling any vacancies. Competitive service FLRA employees may block only competitive service actions and excepted service employees, only excepted service actions. Surplus and displaced FLRA employees will receive priority placement for the following FLRA personnel actions for which they qualify:

1. Reassignments;

2. Changes to lower grade, except when the change is due to an employee's failure to satisfactorily complete a supervisory or managerial probationary period;

3. Promotions requiring competition;

4. Competitive appointments from registers and direct hires (including selections using the outstanding scholars program);

5. Time-limited competitive service appointments of 121 days or more;

6. Excepted service appointments;

7. Transfers from other Federal agencies; and

8. Reinstatements other than of those employees registered on the FLRA RPL.

F. **Excluded Personnel Actions.** The following FLRA actions are not blocked by its eligible surplus and displaced FLRA employees:

1. Reclassification actions;

2. Career ladder promotions;

3. Reorganizations and actions taken under 5 CFR 351;

4. Actions covered under statutory reemployment and restoration provisions;

5. Reemployment of former FLRA employees exercising regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Worker's Compensation or who have received notice that their compensation benefits will cease because of recovering from the disabling injury or illness;

6. Transfers of Function;

7. Job swaps when the actions involve no increase in grade or promotion potential;

8. Intergovernmental Personnel Act (IPA) assignments.

9. Position changes resulting from disciplinary action;

10. Details;

11. Temporary promotions of 121 days or more, including extensions;

12. Placements under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who has been unable to provide useful and efficient service in his or her current position because of a medical condition;

13. Placements that are "reasonable offers" under 5 U.S.C. 8336(d) and 8414(b);

14. Internal placements of injured or disabled employees when FLRA identifies positions for reasonable accommodations;

15. Internal actions taken to resolve formal complaints, grievances, or other litigation;

16. Internal actions to return employees to appropriate non-supervisory positions for failure to successfully complete the supervisory probationary period;

17. Extensions of term or temporary appointments made before February 29, 1996; or for actions made after that date if CTAP candidates were notified and appropriately considered -- so long as the original announcement stated that extensions could be made without further announcements;

18. Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer; and

19. Placements of SES members under 5 U.S.C. 3594.

G. **Order of Selection for FLRA Vacant Positions Advertised Internally.** FLRA will select applicants for its vacancies for which the area of consideration is FLRA only in the following order:

1. Well qualified surplus and displaced FLRA competitive service employees will be selected for a competitive service vacancy before anyone else inside the Agency unless doing so would cause another FLRA employee to be separated by reduction-in-force. A non-surplus or non-displaced FLRA employee cannot be selected if a well qualified surplus or displaced FLRA employee is available in the commuting area;

2. Well qualified surplus and displaced FLRA excepted service employees will be selected for an excepted service vacancy before anyone else inside the Agency unless

doing so would cause another FLRA employee to be separated by reduction-in-force. A non-surplus or non-displaced FLRA employee cannot be selected if a well qualified surplus or displaced FLRA employee is available in the commuting area;

3. If two or more eligible FLRA surplus or displaced employees apply who are determined to be well qualified, the Agency may select any one of them;

4. If no eligible surplus or displaced FLRA employees apply and no qualified former employees are registered on the RPL, the Agency may select through regular procedures.

H. **Employee Access to Transition Assistance Services.**

1. Excused Absence. Displaced and surplus FLRA employees may be excused from work without loss of pay or leave for a reasonable period of time to use services and facilities. Employees should request approval to be excused from work from their supervisors. If critical work precludes approval for the requested time, the supervisor should approve the excusal at the earliest practical time.

2. Field Offices and Remote Sites. Transitional assistance services will be identified in regional office cities outside Washington, D. C. Displaced and surplus employees in regional offices and remote duty locations will be notified of career transition services. Subject to budget limitations and the number of employees involved, the Agency may schedule sessions with an agency representative or counselor at the remote site, pay for eligible employees' travel to the Agency facility, and/or make information available in a computer-based environment.

I. **FLRA Career Transition Assistance Services.** FLRA will provide information and assistance to eligible competitive and excepted service employees on career transition services. Such services may include but are not limited to the following:

1. Information about the availability of Federal, state, and local career transition assistance and support for employees, including those with disabilities.

2. Opportunities for training surplus and displaced employees in their current career field and retraining in other career fields that have greater placement opportunities, subject to budget constraints and the skills needed to support the Agency's mission.

3. Certificates of Expected Separation to employees expected to be separated through reduction-in-force procedures so that they may immediately qualify for programs under the Job Training Partnership Act administered by the Department of Labor.

4. Information to former employees who were involuntarily separated about the Reemployment Priority List and FLRA vacancies.

5. Publications, videos, books, software, and classes related to career transition, such as resume writing, job search techniques, financial planning, and retirement counseling will be made available as appropriate.

J. **Reporting.** The HRD will submit an annual report covering each fiscal year activity under 5 CFR 330, Subpart F, no later than December 31 of each year, beginning December 31, 1996. Each report will be addressed to the U. S. Office of Personnel Management, Workforce Restructuring Office, Employment Service, 1900 E Street, NW, Washington, D. C. 20415. Reports will include:

1. Number of FLRA employees identified as surplus and displaced during the fiscal year;

2. Number of CTAP applicants found to be well qualified;

3. Number of CTAP applicants found to be not well qualified;

4. Number of eligible FLRA employee selections under this Plan;

5. Number of second reviews and results of those second reviews;

6. Number of CTAP eligibles who declined job offers; and

7. Name, title, and telephone number of the reporting FLRA official.

Chapter IV. Interagency Career Transition Assistance Plan for Displaced Employees

A. **Purpose.** This Chapter implements the President's memorandum of September 12, 1995, to establish a special interagency career transition assistance plan for competitive service Federal employees during this period of severe downsizing. This Chapter applies only when FLRA is making selections from outside its workforce.

B. **Definitions.**

1. Displaced Employee means:

   a. A current or former career or career-conditional employee in Tenure Groups I or II who has received a specific RIF separation notice or a notice of proposed separation for declining a management directed reassignment or transfer of function outside of the local commuting area;

   b. A former career or career-conditional employee who was separated because of a compensable injury, whose compensation has been terminated, and whose former agency is unable to place the individual;

   c. A former career or career-conditional employee who retired with a disability under 5 U.S.C. sections 8337 or 8451, whose disability annuity has been or is being terminated;

   d. A former career or career-conditional competitive service employee in receipt of a RIF notice, who retired on the effective date of the RIF or under discontinued service retirement;

   e. A former career or career-conditional competitive service employee who is separated because he/she declined to accept a transfer of function or a management directed reassignment to another commuting area;

   f. A former Military Reserve or National Guard technician who is receiving a special disability retirement annuity from OPM under 5 U.S.C. sections 8337(h) or 8456; and

   g. A current Executive Branch employee in the General Schedule or equivalent excepted service, serving on an appointment without time limit, who has noncompetitive appointment eligibility and selection priority by statute for competitive service positions and who is in receipt of a reduction-in-force separation notice or notice of proposed removal for declining a transfer of function or a management directed reassignment outside the commuting area.

2. Eligible Employee, Commuting Area, Special Selection Priority, Vacancy, and Well Qualified Employee have the same meanings as those set forth in Chapter III, paragraph 2 of this Instruction.

C. **Eligibility.** To be eligible for special selection priority, a displaced employee (as defined above) must meet all of the following conditions:

1. Occupies a permanent position in the competitive service or qualifying excepted service;

2. Has a current (or last) performance rating of at least fully successful or equivalent (except for employees eligible because of termination of a disability annuity or as Military Reserve or National Guard technicians);

3. Applies for a vacancy in the local commuting area in which displaced that is at or below the grade level from which the employee was or is being separated, that does not have greater promotion potential than the position from which the employee was or is being separated;

4. Files an application for a specific vacancy within the time frames established by the Agency; and

5. Is determined by the Agency to be well-qualified for the specific position.

D. **Individual Qualification Requirements.** Subject to applicable requirements of law, the Code of Federal Regulations, and this Instruction, an individual is considered qualified for a position if he or she:

1. Meets OPM established or approved qualification standards and requirements for the position, including any minimum educational requirements and any selection placement factors established by the Agency;

2. Is physically qualified, with reasonable accommodation if appropriate, to perform the duties of the position;

3. Meets any special qualifying condition that OPM has approved for the position; and

4. Meets any other applicable requirements for appointment to the competitive service.

E. **Proof of Eligibility.** To receive special selection priority when applying for vacancies, eligible individuals must apply directly to the Agency and submit one of the following as proof of eligibility:

1. RIF separation notice;

2. Documentation showing that the employee was or is being separated as the result

of declining a transfer of function or reassignment to another commuting area offer;

3. Official losing agency certification that it cannot place an individual whose injury compensation was or will be terminated;

4. Official OPM certification that an individual's disability retirement annuity was or is being terminated; or

5. Official notification from the Military Department or National Guard Bureau that the employee has retired under 5 U.S.C. 8337(h) or 8456.

F. **Effective Date of Eligibility.** Eligibility for special selection priority begins:

1. On the date the Agency issues a RIF separation notice or a notice that it cannot place an employee who is recovered from a compensable injury under 5 U.S.C. 81;

2. On the date an employee who retired on disability is notified that the disability annuity has been or is being terminated, or on the date that the Agency certifies that it cannot place such an employee;

3. On the date an employee receives a proposed separation notice for declining a transfer of function or a management directed reassignment outside the local commuting area; or

4. On the date the National Guard Bureau or Military Department certifies that an employee has retired under 5 U.S.C. 8337(h) or 8456.

G. **Expiration of Eligibility.** An individual loses eligibility for special selection priority:

1. One year after separation;

2. One year after the Agency certifies that an individual who has recovered from a compensable injury cannot be placed;

3. One year after an individual who took disability retirement receives notice that his or her disability has been or is being terminated;

4. When an individual receives a career, career-conditional, or excepted service appointment without time limit in any agency at any grade level;

5. When an employee no longer meets the eligibility requirements set forth above (e.g.,

the employee is no longer being separated by RIF or adverse action for declining a transfer of function or a management directed reassignment outside of the community area, or who separates voluntarily by resignation or non-discontinued service retirement prior to the RIF effective date); or

6. When an eligible employee declines an appointment without time limit for a FLRA position for which the employee applied and was determined to be well qualified, or upon the applicant's failure to respond within a reasonable period of time to an offer or official inquiry of availability.

H. **Order of Filling Vacancies Externally.** Agencies may not recruit externally to fill vacancies when they have surplus or displaced employees within their own agencies who apply and are qualified for the vacancies. When filling a vacancy from outside its workforce, FLRA must select:

1. Current or former employees from its RPL;

2. At the Agency's option, any other former employee displaced from the Agency who applies for the vacancy but had not registered for the RPL;

3. Current or former eligible Federal employees displaced from other agencies;

4. Any other candidate under appropriate selection procedures.

I. **Personnel Actions Covered.** The following actions are subject to this order of selection and are covered under this Chapter:

1. Competitive appointments (e.g., from registers and direct-hire);

2. Noncompetitive appointments (e.g., those appointed under the special authorities provided in 5 CFR 315, Subpart F);

3. Movement between agencies (e.g., transfer) except for those eligible because they are recovered from a compensable injury;

4. Reinstatements, except for those made through the RPL; and

5. Time-limited appointments of 121 days or more, including all extensions, to the competitive service.

J. **Personnel Actions Excluded.** The following actions are not covered under this Chapter:

1. Selections under the FLRA CTAP or RPL or any other internal Agency movement of current Agency employees;

2. Appointments of 10-point veterans, if reached through appropriate appointing authorities;

3. Reemployment of former agency employees with statutory or regulatory reemployment rights;

4. Temporary appointments of 120 days or less (including extensions);

5. An action taken under RIF;

6. The filling of a position by an excepted appointment;

7. Conversions of employees on excepted appointments that confer eligibility for noncompetitive conversion into the competitive service;

8. Noncompetitive movement of displaced employees between agencies or employees moved as a result of reorganization or transfer of function;

9. Placement of injured workers receiving worker's compensation benefits;

10. Action taken by an agency head or designee to settle a formal complaint, grievance, appeal, or other litigation;

11. Reappointment of former FLRA employees into hard-to-fill positions, the duties of which require unique skills and experience necessary to conduct a formal skills-based training program for the agency;

12. Retention of individuals whose positions are brought into the competitive-service under conversion, when applicable, under 5 CFR 315 and 316;

13. Placement of a member of the SES under 5 U.S.C. 3594; and

14. Assignments made under the Intergovernmental Personnel Act (IPA).

K. **OPM Notification Requirements.**

1. At the time it issues RIF separation notices or notices of proposed removal for failure to

accept a transfer of function or a management directed reassignment outside of the local commuting area, FLRA must give its employees information about their eligibility for the special Interagency selection priority. Such information must contain guidance on how to apply for vacancies under the ICTAP and what documentation generally is required as proof of eligibility;

2. FLRA must take reasonable steps to ensure its eligible employees are notified of vacancies and what is required for eligible employees to be determined best-qualified for the vacancies;

3. FLRA must provide written advice to eligible ICTAP candidates who apply for specific vacancies on the results of their application and whether they were well qualified. If they were not well qualified, FLRA must include information on the results of an independent, second FLRA review. If an applicant is found to be well qualified; and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

4. FLRA must notify OPM when accepting applications for competitive service positions from outside the FLRA (including applications for temporary positions of 121 or more days);

5. FLRA must provide OPM an electronic file of complete vacancy announcements or recruiting bulletins for all competitive service positions reported;

6. Content. FLRA notice to OPM of job announcements must include the position title, tenure, location, pay plan and grade (or pay rate) of the vacant position; application deadline; and other information specified by OPM. It also must include qualifications required, equal opportunity provisions and, when applicable, veteran's preference provisions.

L. **Reporting.** The HRD will report fiscal year activity for all competitive service vacancies when accepting applications from outside of the Agency under this Chapter by December 31 of each year. The report will include:

1. Number of selections of ICTAP eligible employees;

2. Number of ICTAP candidates found not well qualified;

3. Number of ICTAP candidates found well qualified;

4. Number of selections of competitive service Tenure Groups I and II employees from other agencies who are not displaced;

5. Number of declinations from ICTAP eligible candidates;

6. Number of competitive service Tenure Groups I and II appointments from outside the Federal government; and

7. Number of placements made from the FLRA RPL.

Chapter V. Program Administration and Evaluation

This Instruction is administered and evaluated by the HRD. Questions and suggestions for improvements are welcome and should be directed to the HRD.

This Instruction is effective: March 11, 1998.

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Solly Thomas
FLRA Executive Director

Federal Labor Relations Authority
WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION
FLRA No.

CATEGORY RATING POLICY	Issue Date: Nov 1, 2010

Section 1 – Category Rating. Category Rating is a ranking and selection procedure authorized under the Chief Human Capital Officers Act of 2002, as codified in 5 United States Code § 3319.

Section 2 – Purpose. The purpose of category rating is to increase the number of qualified applicants the FLRA has to choose from while preserving veterans preference rights by giving agencies the flexibility to assess and select from applicants in the highest quality group without regard to the "rule of three."

This guidance implements 5 U.S.C. §3319, which authorizes Federal agencies to use alternative procedures in assessing applicants for employment using category rating and selection procedures. Effective November 1, 2010, in accordance with the Presidential Memorandum "Improving the Federal Recruitment and Hiring Process" dated May 11, 2010, all FLRA offices are required to use category rating for Delegated Examining in the competitive service.

Section 2 – Scope. This policy applies to positions in the competitive service of the Federal government.

Section 3 – References.

a. 5 United States Code (U.S.C.) § 3319.

b. 5 Code of Federal Regulations (CFR) part 337, subpart c.

c. Delegated Examining Operations Handbook, Chapter 5, Section B; and Chapter 6, Section D.

d. The Presidential Memorandum - Improving the Federal Recruitment and Hiring Process Issued May 11, 2010.

Section 5 – Definitions.

a. Appointing Authority- The legal or regulatory basis on which a specific appointment may be made to a Federal civilian position.

b. Assessment Tool – A device or method to measure the degree to which an applicant possesses competencies or knowledge, skills, and abilities (KSAs) necessary for successful job performance.

c. Candidate – See Eligible.

d. Career Transition Assistance Plan (CTAP) – An agency plan developed to actively assist its displaced or surplus employees who served under a competitive service appointment, in tenure group I or II, and received a specific reduction in force (RIF) separation notice in finding employment within the agency.

e. Certificate or Certificate of Eligibles – A list of the highest-ranked eligibles and preference eligibles referred to the selecting official containing only the names of the highest-ranked qualified eligible candidates.

f. Competency – A combination of skills, knowledge, abilities, and other characteristics that contribute to outstanding performance for a particular job.

g. Competitive Service – All civil service positions in the executive branch of the federal government except for positions specifically exempted by statute from the competitive service.

h. Eligible or non-preference eligible – An applicant who satisfies the minimum qualifications requirements for the position and, therefore, is eligible for consideration.

i. Preference Eligible – Veterans who have been separated from the armed forces under honorable conditions and who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized or during

particular defined periods (for more information regarding campaigns: https://www.opm.gov/veterans/html/vgmedal2.asp).

A retired member of the armed forces is generally excluded from the definition of "preference eligible" unless the individual qualifies as a disabled veteran or retired below the rank of major or its equivalent (5 U.S.C. § 2108). For more information see the Vet Guide: http://opm.gov/staffingPortal/Vetguide.asp.

j. Quality Categories – A grouping used to distinguish differences in the quality of candidates determined by job-related experience, competencies, knowledge, skills, and abilities. Each grouping contains individuals with similar levels of job-related competencies or similar levels of KSAs (i.e., scope of competencies, level of difficulty, complexity of competency, performance, and level of job).

k. Qualified Veterans Preference Eligible – See preference eligible.

l. Reemployment Priority Lists (RPL) – A list of employees within the local commuting area who have been separated from the FLRA due to reduction in force (RIF) or work-related injury. If an employee on the RPL is qualified for a vacancy that exists within the local commuting area, the agency must select that employee before hiring anyone from outside the agency. See 5 CFR Part 330.

m. Selectee – A person selected for appointment into a position.

n. Selecting Official: A person having the authority by law or by duly delegated authority to appoint, employ, or promote individuals to positions in an agency.

Section 6 – Roles and Responsibilities. The Human Resources Division (HRD) is accountable for implementing the category rating policy as well as standard operating procedures in accordance with federal statutes and regulations, merit principles and competitive examining procedures; advising managers and selecting officials; and providing periodic training to supervisors and employees.

Selecting Officials are accountable for using category rating as the method in selecting highly qualified eligibles as well as ensuring that selection decisions are consistent with federal statutes and regulations, merit principles, and competitive examining procedures.

HRD will provide training to FLRA employees prior to the use of the Category Rating Procedures.

Section 7 – Policy. This policy is established in accordance with the parameters outlined in 5 U.S.C. §3119, 5 C.F.R. part 337, subpart C. Managers in consultation with the Human Resources Division are responsible for effective implementation and use of the category rating method.

a. Coverage - Category rating applies to all competitive service positions filled through competitive examining procedures and must be used in conjunction with the agency's current Career Transition Assistance Plan (CTAP). Category rating may not be used to fill excepted service positions.

b. Quality Categories - Two or more pre-defined quality categories will be used to assess and evaluate each applicant against the job-related criteria. Applicants who meet the basic qualifications and requirements established for the advertised position will be placed into the appropriate quality category.

c. Assessment - Candidates will be assessed against job-related criteria assigned to at least two or more previously defined quality categories. The categories will be defined through a job analysis and crediting plan conducted in accordance with the Uniformed Guidelines on Employee Selection Procedures, prior to starting any recruitment activity. The competencies, knowledge, skills, and abilities identified in the job analysis will serve as the foundation for the assessment strategy.

d. Vacancy Announcement - The vacancy announcement will communicate to applicants the rating criteria or method used to evaluate and assess each applicant's qualifications and experience

e. Ranking Eligibles - All applicants who meet the basic qualification requirements established for the position will be ranked by being assigned to the appropriate rating category based upon the job-related assessment tool(s).

f. Certificate of Eligibles Applying Veterans Prefernce - The category rating method does not add veterans preference points or apply the "rule of three," but protects the rights of veterans preference eligibles by placing them ahead of non-preference eligibles. Names of all eligible candidates in the highest quality category will be referred on the Certificate of Eligibles to the selecting official for consideration, with qualified veterans preference

eligibles listed ahead of non-preference eligibles in that category. The candidate's names will be listed in alphabetical order within the category.

(i) For most jobs in the General Schedule (GS), the Certificate of Eligibles or equivalent certifies eligibles in the following order:

- CTAP eligibles or RPL;
- CPS (Qualified preference eligibles with a compensable service-connected disability of 30 percent or more) and CP (a compensable service-connected disability of at least 10 percent but less than 30 percent)
- XP (10-Point Disability Preference or 10-Point Derived Preference; granted to widow/widower or mother of a deceased veteran, or spouse or mother of a disabled veteran) and TP (5-point preference eligible)
- Non-preference eligibles in highest quality category.

(ii) Career Transition Assistance Plan (CTAP) - If the CTAP eligible is well-qualified for a vacancy, the FLRA must select the CTAP eligible over both other candidates from inside or outside of the agency and veterans preference eligibles. If two or more well qualified CTAP applicants request selection priority, then the agency may choose among them.

If there are no well-qualified CTAP eligibles, then the agency may fill the position by making a selection from the other qualified candidates on the certificate of eligibles.

(iii)CPS and CP will be placed at the top of the highest quality category (except for scientific or professional positions at the GS-9 level or higher such as Economists and Librarians).

g. Selection Process - Selections are made within the highest quality category regardless of the number of candidates (i.e., the rule of three does not apply). A selecting official may select a non-preference eligible over a preference eligible only if the selecting official follows the procedures set forth in 5 U.S.C. § 3317(b) or 3318(b), as applicable. See section h – Objections and Pass Overs.

h. Objections and Pass Overs - Under category rating, OPM retains exclusive authority to: Make medical qualification determinations pertaining to preference eligibles, and grant or deny an agency's request to pass over a preference eligible with a compensable service-connected disability of 30

percent or more. To request an approval of an objection or a pass over, the selecting official must document the reason(s) for doing so and submit the request to HRD.

(i) Objection to an Eligible - A selecting official may object to any certified eligible. The selecting official and HRD should refer to the FLRA Interagency Delegated Examining Agreement for specific authorities and follow the provisions of the Delegated Examining Operations Handbook (DEOH).

(ii) Pass over of a veterans preference eligible – Passing over a veterans preference eligible is the same as the process for objecting to an eligible; except for pass overs of 30 percent or more veterans preference eligibles. OPM retains authority to rule on the proposed pass over of a 30 percent or more compensable disabled veteran. (5 U.S.C. § 3318(b)(2)). Specific steps for pass over procedures are outlined in the DEOH, Chapter 6, Section D, Objection to Eligibles. Refer to the agency Interagency Delegated Examining Agreement for specific authorities. Follow the provisions of the DEOH.

i. Merging Categories - If there are fewer than three candidates in the highest quality category, then the selecting official may combine (merge) the highest quality category with the next lower quality category and make a selection from the newly merged category. The newly merged category is the new highest quality category. Veterans preference eligibles must be listed ahead of non-preference eligibles in the newly merged category.

Merging categories is an option available to the Human Resources Specialist and the selecting official at two places in the hiring process:

(i) Before certifying/issuing a Certificate of Eligibles: If there are fewer than three available eligible candidates in the highest quality category from whom to make the selection, then the highest quality category may be merged with the next lower category before issuing a certificate.

(ii) Before selecting an Eligible: If there are fewer than three available eligible candidates in the highest quality category from whom to make the selection, then the highest quality category may be merged with the next lower category before selecting an eligible.

j. Reporting Requirement - The Human Capital Officers Act established special reporting requirements for category rating. In accordance with 5

U.S.C. § 3319, FLRA's Human Resources Division will use category rating to recruit for vacant positions that are in the competitive service and submit a report to the President of the Senate and the Speaker of the House every year for 3 years from the date of implementation, November 2010.

Sonna Stampone
Executive Director

POLICY AND PROCEDURES FOR CONDUCTING INVESTIGATIONS BY THE OFFICE OF INSPECTOR GENERAL

A. **PURPOSE.** This Instruction defines the role of the Office of Inspector General (OIG) in detecting and preventing fraud, waste and abuse in the programs and operations of the Federal Labor Relations Authority (FLRA). It establishes FLRA policy and procedures for conducting investigations by the OIG at the FLRA. Such policy and procedures are designed to ensure that allegations of illegal acts, violations of the Ethics Act of 1989, violations of the merit system or other job-related misconduct, either administrative or criminal, are received and handled by the OIG in a timely manner.

B. **SCOPE.** The provisions of this Instruction are applicable to all FLRA organizational elements and employees, as well as to individuals and entities doing business with the FLRA or receiving funds or benefits from the FLRA.

C. **AUTHORITY.** The Inspector General Act of 1978 (Pub. L. 95-452) as amended, inter alia, by the Inspector General Act Amendments of 1988 (Pub. L. 100-504).

D. **REFERENCES.**

1. FLRA Instruction 2920.1, Audit Policies and Procedures.

2. Quality Standards for Investigations, President's Council on Integrity and Efficiency (PCIE), September 1990.

E. **DEFINITIONS.**

1. Abuse. Improper or excessive use of a right, privilege, or position, such as abuse of one's authority, that amounts to a violation of Federal laws or regulations or standards of conduct applicable to FLRA personnel.

2. Fraud. A false representation of a material fact that is intended to deceive or mislead. This includes the omission or concealment of a material fact where there is a duty to reveal or disclose that fact.

3. Investigation. The collection and evaluation of evidence obtained through interviews, records examinations, or other techniques in connection with possible violations of criminal, civil or administrative laws and regulations.

4. Mismanagement. The failure to accomplish the goals and objectives of the activity or organization through the fault of those entrusted with managing the activity or organization including its resources.

5. Deficiency. Any action which could result in failure to accomplish mission functions or could result in additional costs or loss of funds.

6. Records. All documents including reports, reviews, opinions, papers, recommendations, and other materials that are prepared by or for FLRA personnel for the conduct of the official business of the FLRA. Material maintained or stored in a computer database or computer file system shall be considered a record within this definition.

7. Waste. The expenditure of monies or use of resources carelessly and inefficiently without gaining a proper, reasonable or normal return.

F. **POLICY.**

1. Investigations will be conducted in a fair and impartial manner with due respect for the rights and dignity of those involved, and with the perseverance necessary to determine all of the facts. Evidence will be gathered and reported in an unbiased and objective manner and support all the facts developed to prove or disprove an issue.

2. Investigations will focus on the detection and/or prevention of fraud, waste and abuse involving FLRA resources, programs and operations.

3. Investigations will be conducted in a manner that minimizes disruption of the official business of the FLRA as much as is practicable. Investigations will be conducted as expeditiously as possible.

4. Investigations will be planned and carried out to protect agency assets and programs. The pendency of an investigation does not necessarily bar management from taking administrative action against an employee, or from strengthening controls or taking

corrective action within a program area. However, any such management action shall be coordinated with the OIG to avoid compromising an ongoing investigation.

5. When appropriate, the OIG will advise individuals of their rights, as set forth in Paragraph I.

G. **RESPONSIBILITIES.**

1. The Inspector General is responsible for:

   a. Conducting objective, independent investigations involving the resources, programs or operations of the FLRA;

   b. Developing, establishing, updating policies and procedures for and properly conducting investigations;

   c. Ensuring that a process is in place to receive and review complaints and information concerning the possible existence of an activity constituting a violation of laws, rules or regulations, or mismanagement, gross waste of funds, abuse of authority, a significant deficiency in program and/or process, or a specific danger to the public health and safety;

   d. Keeping the Chair and Congress fully informed of issues concerning fraud, waste, abuse and mismanagement within the programs and operations of the FLRA;

   e. Coordinating OIG activities relating to the prevention and detection of fraud, waste and abuse with the Comptroller General and Federal, State, and local government agencies and non-governmental entities, when appropriate; and

   f. Reporting expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

2. All Employees are responsible for:

   a. Reporting wrongdoing (even if only suspected) immediately to a supervisor or to the Inspector General;

b. Fully and promptly cooperating with OIG investigations, including requests for interviews and briefings; and

c. Providing records, as defined in Paragraph E, to OIG employees or agents, as requested.

H. **COMPLAINTS**.

1. Filing. Any person with knowledge of potential fraud, waste or abuse may file a complaint in person, by mail or over the telephone, as follows:

a. Individuals may speak with a member of the OIG in person by coming to the office located at 607 14th Street, N.W., Room 240, Washington, D.C. 20424; or calling (202) 482-6570 for an appointment.

b. Complaints may be mailed to--

Office of Inspector General
Federal Labor Relations Authority
607 14th Street, N.W. - Room 240
Washington, D.C. 20424-0001

This information may be marked "Private To Be Opened By Inspector General Only," if so desired.

c. Individuals may call either the FLRA OIG or the General Accounting Office (GAO) Hotlines to report potential cases of fraud, waste or abuse. The number of the FLRA OIG Hotline is 1-800-331-3572 (FLRA). The FLRA Hotline is generally staffed during normal duty hours and connected to an answering machine during nonduty hours.

d. The number of the GAO Hotline is (202) 512-7470 or 1-800-424-5454. This Hotline is staffed during normal duty hours and connected to an answering machine during nonduty hours. These complaints are usually referred to the FLRA OIG for action. The dispositions must be reported to the GAO.

2. Content. In order for the complaint to be properly evaluated, as much information as possible should be provided, including the following:

a. A brief, accurate statement of those facts believed to provide evidence of wrongdoing;

b. The identities of persons or entities involved, including names and addresses or office locations;

c. All relevant date(s), time(s), and place(s) the suspected wrongdoing took place, or is expected to take place;

d. Pertinent documents or other proof that will support the complaint; and

e. Names, telephone numbers, and addresses of others who may have information relating to the suspected wrongdoing.

3. Disposition. Following receipt of information concerning possible fraud, waste or abuse, the OIG will evaluate the complaint and determine which of the following actions to take:

a. Initiate an Investigation. When a complaint contains sufficient information indicating the possible existence of conduct or an activity constituting fraud, waste or abuse, the OIG may initiate an investigation. If information is not specific but the issue has the potential of affecting FLRA operations, the OIG will conduct a preliminary inquiry to acquire information which will serve as a basis for an OIG determination of whether or not an investigation should ensue.

b. Schedule an Audit/Internal Review. Whenever information received by the OIG raises questions of policies or procedures, or suggests a problem of an institutional rather than individual nature, the OIG may schedule an audit or internal review.

c. Transfer the Complaint to Office Directors or Program Officials. The OIG will transfer a complaint to Office Directors or Program Officials for review and action by such individuals (with monitoring and follow-up by the OIG) when the subject matter is within the functional jurisdiction of other offices, including personnel security, employee suitability, equal employment opportunity, unfair labor practices, and similar Federal activities which have established statutory grievance processes.

d. Transfer the Case to Another Agency's Office of Inspector General. If the information concerns the personnel, programs, or funds of another agency, the OIG will transfer the complaint to the Office of Inspector General of that agency. No complaint will be transferred where the allegation concerns only the FLRA, except as indicated below in paragraph 3e.

e. Transfer the Case to the Department of Justice or Federal Protective Service. After notification to the FLRA Chair, the OIG may transfer a complaint to the Department of Justice, the Federal Bureau of Investigation (FBI), or the Federal Protective Service (FPS) when the complaint concerns a matter that, because of its complexity, subject matter, or required investigative resources, would be more appropriately handled by the Department of Justice, the FBI, or the FPS.

f. No Investigative Action. The OIG will close a case without action where the facts alleged or the results of a preliminary investigation do not warrant an investigation.

g. Follow-up. The OIG may contact the complainant for further information, if needed, to evaluate the complaint during or after the investigation.

I. **INVESTIGATION PROCEDURES:**

1. Subject Matter of Investigations. The OIG will investigate allegations of a civil, criminal, and/or administrative nature involving FLRA employees or involving individuals or entities receiving funds from the FLRA.

   a. Criminal violations could include, but are not limited to, theft of Government property, services or funds; conflicts of interest; procurement fraud; bribery or attempted bribery; receipt of gratuities inconsistent with FLRA rules or Federal laws; forgery; fraud; and other violations of criminal law.

   b. Civil violations could include, but are not limited to, misuse of Government property, services or funds; defamation; discrimination; giving gifts inconsistent with FLRA rules or Federal laws to supervisors; mismanagement; reckless or disorderly conduct constituting a serious and substantial threat to public health or safety; disclosing classified or confidential information; use of public office for

private gain; and other violations that may constitute fraud, waste, abuse or mismanagement.

c. Administrative violations of employee standards of conduct that amount to fraud, waste or abuse could include, but are not limited to, insubordination; absence without leave; abuse of intoxicants; discrimination; misuse of Government property, services or funds; and/or mismanagement or other offenses enumerated in the Table of Penalties of FLRA Instruction 3810.1.

2. Initiation. Investigations may be initiated on the basis of a complaint received by the OIG either orally or in writing, by direction of the Chair, by referral from another agency, pursuant to an investigative plan prepared by the OIG, or by an indication of fraud, waste or abuse in FLRA programs or operations.

3. Notification. Notification of parties will be determined on a case-by-case basis by the OIG. In most cases, the OIG will inform the suspect and his/her supervisor that an investigation will take place. There may be some cases that are complex or appear to be criminal in nature and informing the suspect and/or supervisors may impede or alter the process. In some cases, the IG may not notify the suspect but might notify the supervisor. The OIG may interview any employee and need not obtain the permission of the employee's supervisor. Whenever possible, the OIG will provide reasonable notice for interviews. At the discretion of the FLRA IG, a member of the OIG or another FLRA organization may be asked to witness and/or record the conduct of an interview.

4. Access to Records. The OIG is authorized by law to have access to all FLRA records relevant to the investigation. Official records may not be withheld for any reason other than an express statutory, regulatory, or other legal prohibition on such disclosure, such as statutes concerning access to national security information. The Privacy Act does not bar disclosure or release of records to the Inspector General.

a. When the records obtained by the OIG are original documents, the OIG will provide the custodian of such records with a receipt.

b. If the OIG deems it necessary, it may request the FLRA Chair to take action to sequester documents to prevent destruction or alteration.

5. Referrals. If during an investigation the facts discovered by the OIG support the occurrence of fraud, waste, abuse, or mismanagement, the OIG will prepare a report for administrative or prosecutorial action. The referral report will be forwarded to the appropriate agency management or to Federal, State, or local prosecutors for action. A copy of the referral report will be sent to the FLRA Chair concurrently as the referral is made. Referrals may be one of the following types:

   a. Criminal. If the OIG has reasonable grounds to believe that there has been a violation of criminal law, the OIG will refer the matter to the Attorney General for prosecution or to the Federal Protective Service, or Department of Justice for additional investigation.

   b. Civil. The OIG may refer possible civil violations to the Attorney General for appropriate action.

   c. Administrative Action. The OIG may refer a case for administrative action to be taken by the FLRA Chair or other appropriate official or Office Director where no referral to the Attorney General is deemed necessary or the Attorney General declines prosecution. The decision to take such administrative action will be made in accordance with FLRA Instruction 3810.1, Employee Discipline.

6. Employee Response. Before any referral for administrative action is taken as a result of an OIG investigation, the allegations are usually discussed with each current FLRA employee who may be subject to legal or administrative actions as a result of OIG factfinding. If an allegation is discussed with an employee, the employee may respond, either orally or in writing, and may furnish documentary evidence in support of the answer. Any response, to be effective, should be provided to an OIG representative in a timely manner. The employee will usually be provided with such time line.

7. Case Information. The OIG will present a summary of significant complaints investigated and their results in the Semiannual Report to the FLRA Chair and Congress. The Semiannual Report may include statistics and information, indicating whether cases were prosecuted, handled administratively, or closed with no further action and the results of any such action. The report will not contain the names of the individuals involved.

8. Closing the Investigation. An investigation will be closed when the information developed indicates that no violation of any law, rule, regulation, or FLRA Instruction has occurred, or when all appropriate administrative or prosecutorial actions have been taken. Upon closing an investigation, the OIG will prepare a Closing Memorandum and Report of Investigation (ROI) describing the investigation, including the allegations and the pertinent facts discovered, the referral made, if any, and the results of such referral. This ROI shall also include a description of any fraud, waste or abuse uncovered in the course of the investigation. This report will be discussed with or distributed to officials, as deemed appropriate, by the Inspector General.

9. Employee Rights. Employees normally retain their constitutional right not to be compelled to give incriminating information, and whatever other constitutional rights may apply in the circumstances. However, when prosecution of an employee for a particular course of conduct has been declined by the U.S. Department of Justice, the employee may be compelled to respond to questions concerning that conduct if he/she is first advised of the declination, and informed that no information he/she provides, and no information derived therefrom, may be used against him/her in any criminal proceeding. When appropriate, OIG personnel conducting interviews will advise employees of the rights that apply to their situation. Employees shall also have the following rights:

   a. Confidentiality. The OIG shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the OIG determines that such disclosure is unavoidable during the course of the investigation, or unless otherwise required by law. Should disclosure become necessary, the OIG will try to inform the complainant in advance.

   b. Anonymity. Individuals may also remain anonymous when filing either a written or verbal complaint. Anonymity may, however, hinder an investigation if the OIG needs further information and is unable to contact the complainant.

   c. Freedom from Reprisals. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not take or threaten to take any action against any employee as a reprisal for stating or disclosing information to the OIG, unless the complaint or information was provided with the knowledge that it was false or with willful disregard for its truth or falsity. Any employee who believes reprisal actions have been or are

being taken against him or her should immediately inform the OIG or the Office of Special Counsel at 1730 M Street, N.W., Suite 216, Washington, D.C. 20036, telephone (202) 653-7188.

d. Union Representation. Employees in a bargaining unit, who reasonably believe that disciplinary action may result, shall have the right to have union representation present at interviews, upon request.

e. Appeal and Rebuttal. Nothing in this Instruction should be interpreted to deprive any employee of any rights that the employee has pursuant to negotiated agreements or other administrative procedures.

This Instruction becomes effective on January 19, 1999.

Solly J. Thomas, Jr.
Executive Director

POLICY AND PROCEDURES FOR CONDUCTING
INVESTIGATIONS BY THE OFFICE OF INSPECTOR GENERAL

Instructions

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

FLRA 1910.5

SUBJECT: CONTINGENCY PLAN FOR SHUTDOWN OF OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

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FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

Instructions

FLRA 1910.5

September 25, 2015

SUBJECT: CONTINGENCY PLAN FOR SHUTDOWN OF OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

A. **PURPOSE**. The purpose of this instruction is to establish procedures to govern the operations of the Federal Labor Relations Authority (FLRA) in the event of a lapse in appropriations. All agencies are required to maintain a contingency plan in the event of an appropriations hiatus.

B. **CANCELLATION**. This instruction cancels and supersedes FLRA Instruction 1910.4, dated September 27, 2013, subject: "Contingency Plan for Shutdown of Operations in the Absence of Appropriations."

C. **SCOPE**. This instruction applies to all offices and employees within the FLRA.

D. **REFERENCES**.

1. Office of Management and Budget (OMB) Circular A-11Section 124 (2013).

2. Anti-Deficiency Act, 31 U.S.C. § 1341, 1342.

3. "Authority for the Continuances of Government Functions During a Temporary Lapse in Appropriations," 5 Op. Off. Legal Counsel 1 (1981).

4. Department of Justice Advisory Opinion dated August 16, 1995, "Government Operation in the Event of a Lapse in Appropriations."

5. Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101-7135 (1978).

E. **POLICY**. In the event of an appropriations hiatus, it is the policy of the FLRA to:

1. Commence the process of expeditiously shutting down the FLRA by securing files, property and office facilities.

2. Ensure that the FLRA meets its responsibilities to the parties under the Federal Service Labor-Management Relations Statute, consistent with the requirements of the Anti-Deficiency Act.

3. Ensure that FLRA employees are fully informed as to the reasons for the shutdown; that there are avenues of communication for contacting employees when Agency operations are to resume; and that payroll and other employee benefit obligations authorized during the shutdown period are met.

F. **RESPONSIBILITIES**.

1. The FLRA Chairman, as Chief Executive and Administrative Officer, is responsible for ensuring that all determinations are made that are necessary to operate the FLRA during an appropriations hiatus.

2. The Executive Director, FLRA, is responsible for ensuring the development, coordination, issuance, and maintenance of the FLRA Contingency Plan, and ensuring that appropriate action is taken regarding the orderly shutdown of Agency activities.

3. The General Counsel is responsible for ensuring that regional activities take all actions necessary related to shutdown activities.

4. The Federal Service Impasses Panel Chairman is responsible for ensuring that Panel activities are shutdown in accordance with this plan.

5. Supervisors are responsible for taking appropriate action, consistent with management guidance, regarding the orderly shutdown of activities.

6. Employees are encouraged to monitor local radio, television and official government internet sites for information regarding recall for work information after the suspension of Agency activities.

G. **ORDERLY SHUTDOWN ACTIVITIES**. Upon notification of an appropriations hiatus, Agency employees will be advised to immediately begin an orderly shutdown of Agency activities. The process of communicating the shutdown order, securing files and physical facilities, notifying parties of the cancellation of hearings, and canceling court appearances and meetings will take approximately one-half work day. Employees who are in a travel status when a funding hiatus occurs should communicate with their supervisor(s) immediately for instructions. After completion of shutdown activities, employees who are not necessary to perform essential Agency activities or shutdown operations, will be furloughed.

OMB and the Department of Justice guidance define necessary employees as those required "to protect life and safeguard property and records." Within this context, protection of life and property by FLRA could occur in an instance such as follows:

- To resolve disputes involving a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute that interferes with an agency's operations (5 U.S.C. § 7116(b)(7)) and that involves employees/agencies who protect life and property (e.g., border patrols, air traffic controllers, meat inspectors, health care personnel, national defense and national security personnel).

In this situation, a limited number of FLRA employees must be available:

- to investigate work stoppage situations and make recommendations to the General Counsel (GC) for issuance of an unfair labor practice complaint and the appropriateness of seeking temporary relief (including a restraining order) under 5 U.S.C. § 7123(d); and

- upon the determination of the GC to issue complaint and seek temporary relief, for the Chairman and Members of the Authority under § 7123(d) of the Statute to authorize the GC to seek injunctive relief, and to process the district court injunction action.

Of the approximate 130 current Agency employees, four employees, which consist of the FLRA Chairman, two Authority Members and the GC, are deemed necessary to perform the tasks above. The four employees are each appointed by the President by and with the advice and consent of the Senate under 5 U.S.C. § 7104(b) and (f)(1). A listing of the excepted staff deemed necessary to maintain the operations of the Agency during an appropriations hiatus is shown in Attachment A. During a shutdown period, an employee may not volunteer to do his or her job on a nonpay basis nor may an Agency accept such voluntary services of an individual, unless otherwise authorized by law (31 U.S.C. § 1342).

H. **GENERAL SHUTDOWN ACTIVITIES**.

1. All materials of a confidential nature will be identified and secured.

2. Incomplete projects will be listed, with priorities for the orderly resumption of Activities upon return to work.

3. Emergency situations (e.g., current or imminent labor disputes which are seriously adverse to the public interest) requiring immediate attention, will be identified and brought to the attention of the appropriate management official.

4. Telephone and/or electronic contacts will be made whenever required to advise parties in active cases, court personnel, contractors and other members of the public of Agency shutdown, and appropriate arrangements will be made for each situation. Incomplete contacts of this nature will be identified for followup by those staff members retained to operate the Agency during shutdown. Telephone

messages should be recorded at all office locations throughout the FLRA and an electronic message should be posted on the FLRA website indicating to the public that the Agency is in temporary "shutdown" mode.

5. All of the Regional Office telephones will have a recorded message to identify to the public that the FLRA is in a temporary "shutdown" mode. On the outside door of each Regional Office, a written message will be posted to advise the public to please call the General Counsel's National Office at the current telephone number for hand deliveries. In addition, all Regional Office phone and written messages, and the electronic message on the FLRA website will specify that any charges involving a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute that interferes with an agency's operations (5 U.S.C. § 7116(b)(7)) and that involves employees/agencies who protect life and property (e.g., border patrols, air traffic controllers, meat inspectors, health care personnel, national defense and national security personnel) must be filed with the General Counsel's National Office. Such notice will include the necessary contact information for that office.

6. No obligations may be incurred unless strictly required to effect shutdown or for protection of life and property. Although these obligations may be incurred, no funds may be disbursed. The Executive Director will determine whether an obligation is required to effect shutdown or for the protection of life and property.

7. Equipment will be made secure to the maximum extent possible.

8. Supervisors will secure files and will ensure all computer data will be backed up.

9. Supervisory staff will make arrangements for telephone communications systems for their respective areas of responsibility. These systems will be used by management and employees as a means to disseminate information regarding return to work. Each system will include home (or alternate) telephone numbers in order to apprise employees of the latest developments regarding Agency appropriations.

This instruction is effective September 25, 2015.

Sarah Whittle Spooner
Executive Director

ATTACHMENT A

Excepted Staff Deemed Necessary

Chairman	(1)
Authority Members	(2)
General Counsel	(1)

Total number of employees necessary to operate the Agency during an appropriation hiatus.

4[1]

[1] In the event that any FLRA employee needs to be contacted to resolve a specific dispute or take actions required to safeguard FLRA property, the employee(s) would be deemed necessary solely for that purpose.

Federal Labor Relations Authority

WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION
FLRA No. 3720

EQUAL EMPLOYMENT OPPORTUNITY CULTRAL AWARENESS AND DIVERSITY PROGRAM SPENDING	Issue Date: March 9, 2016

Contents

0101. GENERAL PROVISIONS.

101.1. Purpose.

This Instruction describes policies and guidance for spending Federal Labor Relations Authority ("FLRA" or "Agency") funds on cultural-awareness and diversity programs in furtherance of the FLRA's Equal Employment Opportunity (EEO) Program.

101.2. Policy.

The FLRA is firmly committed to supporting the principles of EEO for employees, and it believes that hosting cultural awareness and diversity programs adds substance and visibility to its EEO Program.

101.3. Scope and Coverage.

This document sets forth the policies and procedures applicable to considering and making decisions on requests to expend Agency funds on cultural awareness and diversity programs.

101.4. Definitions.

A. *Cultural awareness program* is a form of employee training intended to expand the awareness of employees of different cultures and ethnicities in order to meet EEO objectives. Cultural awareness programs include, but are not limited to, Agency newsletter articles and/or events celebrating special-emphasis observances, such as African American History Month; Asian American and Pacific Islander Heritage Month; National Hispanic Heritage Month; and National Native American Heritage Month.

B. *Disposable serveware* includes plates, bowls, napkins, and utensils.

C. *Diversity program* is a form of employee training intended to expand the awareness of employees of the Agency's diverse workforce. Diversity programs include Agency newsletter articles and/or events celebrating Women's History Month; Lesbian, Gay, Bisexual, and Transgender Pride Month; and National Disability Employment Awareness Month.

D. *Ethnic food* includes premade purchased food, as well as ingredients for Agency employee volunteers to make ethnic dishes.

0102. PERMISSIBLE SPENDING.

As set forth below, under Comptroller General precedent, Agency funds may be spent on cultural awareness and diversity awareness activities, as well as meals for guest speakers at cultural awareness and diversity programs. In addition, Agency funds may be spent on ethnic food samplings as part of a cultural awareness program. *Compare Matter of: Army*, B-199387, 1982 WL 27989 (Comp. Gen. 1982), *with Matter of: Army*, B-219265, 64 Comp. Gen. 802 (1985).

102.1. Cultural Awareness Program Spending.

A. *Ethnic Food Samplings.* Agency funds may be spent to purchase ethnic food and disposable serveware to offer employees ethnic food samples of minimal proportions, when the food sampling is intended to increase employee awareness of, and appreciation for, the cultural heritage being celebrated. Such samples should be of a portion size demonstrating that the food is not intended as a meal or snack, for which Agency funds may not be expended under Section 103.2(A), below.

B. *Cultural Awareness Activities.* Agency funds may be spent on cultural awareness activities that are designed to promote EEO training objectives of making the audience or participants aware of the culture or ethnic history being celebrated, such as museum trips, guest speakers, and artistic performances. Artistic performances funded under this provision must be part of a broader program of various presentations on the culture or ethnicity and should feature an explanation of the relevance, meaning, roots, or history of the featured activity.

C. *Meals for Guest Speakers.* Agency funds may be used to purchase a modest meal for a cultural awareness program guest speaker who is not an on-duty federal employee, when the guest speaker's presentation occurs during a mealtime.

102.2. Diversity Program Spending.

A. *Diversity Awareness Activities.* Agency funds may be spent on diversity awareness activities that are designed to promote EEO training objectives of making the audience or participants aware of the history and/or contributions of the group being celebrated, such as museum trips or guest speakers.

B. *Meals for Guest Speakers.* Agency funds may be used to purchase a modest meal for a diversity program guest speaker who is not an on-duty federal employee, when the guest speaker's presentation occurs during a mealtime.

0103. LIMITATIONS ON SPENDING.

103.1. Budget.

The FLRA's spending on diversity and cultural awareness programs shall not exceed one thousand dollars ($1,000.00) per year.

103.2. Unauthorized Expenditures.

Agency funds may not be spent on the following:

A. *Employee meals or snacks.* Absent specific statutory authority, Agency funds may not be spent on employee meals or snacks as part of a cultural-awareness or diversity program. Prohibited meals (such as a full lunch) or snacks (such as donuts and coffee) are distinguishable in portion size from ethnic food samples offered as part of a cultural awareness program, as described in Section 102.1, above.

B. *Employee transportation*. The transportation costs of an employee participating in a diversity or cultural awareness program are not authorized unless the employee is participating in the program as a performer or making some other direct contribution to the event.

0104. PROCEDURES FOR REQUESTING CULTURAL AWARENESS OR DIVERSITY PROGRAM FUNDING.

104.1. Authorization for Funding.

EEO Director Determination. Before Agency funds may be spent on a cultural awareness or diversity program, the FLRA's EEO Program Director must make a determination that the planned cultural awareness or diversity program advances EEO objectives.

104.2. Requisition Procedure.

The process for purchasing items for cultural awareness and diversity awareness activities and programs are as follows:

- Identify a vendor and items for purchase by performing market research;
- Present your event to the EEO Director for approval;
- Create a purchase request ("PR") following FLRA PR procedures;
    - The EEO Director is the requesting office approver and approving official.
- The Administrative Services Division will purchase the food, items, or activities using an FLRA purchase card.

0105. EFFECTIVE DATE.

The policies addressed in this Instruction are effective immediately and replace any prior or conflicting FLRA policies addressing this topic.

Sarah Whittle Spooner
Executive Director

March 9, 2016
Date

Rules and Regulations

Federal Register

Vol. 80, No. 84

Friday, May 1, 2015

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2418

New Debt-Collection Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: Pursuant to the Debt Collection Improvement Act of 1996, the Federal Labor Relations Authority (''FLRA'') is issuing a regulation governing procedures for collecting debts owed to the federal government by present and former FLRA employees. The regulation sets forth the procedures that the FLRA will follow in collecting debts owed to the United States arising from activities under FLRA jurisdiction. These procedures include collection of debts through administrative offset and salary offset. These regulations supersede the FLRA's debt-collection procedures applied under FLRA Internal Regulation 2790, dated December 29, 1986.

DATES: Effective May 1, 2015.

FOR FURTHER INFORMATION CONTACT: Gina Grippando, Counsel for Regulatory and Public Affairs, Federal Labor Relations Authority, Washington, DC 20424, (202) 218–7776.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the Debt Collection Improvement Act of 1996 (DCIA). The DCIA requires federal agencies to collect debts owed to the United States under regulations prescribed by the head of the agency, and standards prescribed by the Department of Justice and the Department of the Treasury. 31 U.S.C. 3711(d)(2). These standards, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. 31 CFR chapter IX, parts 900 through 904.

The DCIA also requires agencies, prior to collecting debts owed to the United States, to: (1) Adopt, without change, regulations on collecting debts by offset promulgated by the Department of Justice or Department of the Treasury (FCCS); or (2) prescribe agency regulations for collecting such debts by offset, which are consistent with the FCCS. 31 U.S.C. 3716. Agency regulations protect the minimum due-process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset, including the ability to verify, challenge, and compromise claims, and access to administrative-appeals procedures which are both reasonable and protect the interests of the United States. Nothing in this regulation precludes the use of collection remedies not contained in this regulation.

The final rule is consistent with the FCCS, as required by the DCIA. The salary-offset portion of the rule has been submitted to and approved by the Office of Personnel Management (OPM), as required by 5 U.S.C. 5514(b)(1).

Section Analysis of the Final Rule

A. Subpart A—General Provisions, Definitions, Scope, Applicability

Subpart A of the final rule sets out the definitions, scope, and applicability of the FLRA's debt-collection procedures. The final rule provides procedures for the collection of FLRA debts as well as procedures for collection of other debts owed to the United States when the FLRA receives, from another agency, a request for offset of an FLRA payment. The FLRA shall follow the procedural standards for collecting debts set forth in the FCCS when it determines that it is appropriate to initiate debt collection or seek offset to collect a debt. 31 CFR parts 900 through 904. The rule does not apply to tax debts or to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS. Additionally, the final rule does not preclude the FLRA from collecting debts under statutes and regulations other than those described in the final rule.

B. Subpart B—Procedures To Collect FLRA Debts

Subpart B of the final rule provides the procedures that the FLRA will use to collect debts. Among other things, subpart B outlines the due-process procedures that the FLRA is required to follow when using offset (administrative, tax refund, and salary) to collect a debt, when garnishing a debtor's wages, or before reporting a debt to a credit bureau. More specifically, the final rule describes the notice that the FLRA will send to a debtor when collecting the debt, including the FLRA's responsibilities and the debtor's associated rights and obligations related to the notice. The FLRA shall assess interest, penalties, and administrative costs on such debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9. Subpart B also explains that the FLRA may waive those assessments, and it provides for situations in which the FLRA may accept payments in regular installments, in accordance with 31 CFR 901.8. The subpart also provides that the FLRA may suspend or terminate a debt and when it will transfer an FLRA debt to the Treasury Department's Financial Management Service for collection under 31 U.S.C. 3711(g) and 31 CFR 285.12. This subpart provides that an employee may request a waiver of the debt, if applicable, and references Appendix A of the final rule, which describes ''Waiving Claims Against FLRA Employees for Erroneous Payments.''

C. Subpart C—Procedures for Offset of FLRA Payments To Collect Debts Owed to Other Federal Agencies

Subpart C of the final rule authorizes the FLRA to collect debts owed to other federal agencies, and it describes the procedures to be followed when another agency would like to use the offset process to collect a debt from a nontax payment issued by the FLRA, as a payment agency. For example, any federal agency may request that the FLRA collect a debt owed to such agency by offsetting funds payable to a debtor by the FLRA, including salary payments issued to FLRA employees. This subpart describes where to send a request and provides that certification of the debt is required. Subpart C also describes what the FLRA will do upon receipt of a request to offset the salary of an FLRA employee, including, among other things, the notice given to the employee and the limits on the amount

that the FLRA will deduct from an employee's salary.

Administrative Procedure Act—Regulatory Analysis

The FLRA has determined that this rule pertains to agency practice and procedure and is interpretative in nature. The procedures contained in the rule for salary offset and administrative offset are mandated by law and by regulations promulgated by OPM, jointly by the Department of the Treasury and the Department of Justice, and by the IRS. Notice of proposed rulemaking is not required under the Administrative Procedure Act (APA) because the rule pertains solely to agency procedure and practice. 5 U.S.C. 553(b)(3)(A). Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory scheme mandated by the DCIA. Likewise, pursuant to 5 U.S.C. 553(d)(3), the agency finds that good cause exists for not providing a delayed effective date.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the rule will affect only persons who owe delinquent nontax debts to the Treasury Department and other federal agencies. Accordingly, a regulatory-flexibility analysis is not required.

Paperwork Reduction Act

The final rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501), since it does not contain any new information-collection requirements.

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 5 CFR Part 2418

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employees, Hearing procedures, Pay administration, Salaries, Wages.

By the Federal Labor Relations Authority on April 24, 2015.

Carol Waller Pope,

Chairman.

Authority and Issuance

For the reasons set forth in the preamble, the FLRA adds 5 CFR part 2418 to read as follows:

PART 2418—FLRA DEBT COLLECTION

Subpart A—General Provisions

Sec.

Subpart B—Procedures to Collect FLRA Debts

Subpart C—Procedures for Offset of FLRA Payments to Collect Debts Owed to Other Federal Agencies

Appendix A To Part 2418—Waiving Claims Against Flra Employees For Erroneous Payments

Authority: 5 U.S.C. 5514; 5 U.S.C. 5584; 5 U.S.C. 6402; 31 U.S.C. 3701, 3711; 3716, 3717, 3718, 3720A, 3720D.

Subpart A—General Provisions

§ 2418.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term ''administrative offset'' includes, but is not limited to, the offset of Federal salary, vendor, retirement, and Social-Security-benefit payments. The terms ''centralized administrative offset'' and ''centralized offset'' refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or *federal agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Chairman means the Chairman of the FLRA or his or her designee.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this part, the term ''debt'' does not include, as described in 31 U.S.C. 3701(d), debts arising under: The Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under sections 204(f) and 1631(b)(4) of such Act [42 U.S.C. 404(f) and 1383(b)(4)] and section 3716(c) [31 U.S.C. 3716(c)], or the tariff laws of the United States.

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Delinquent FLRA debt means a delinquent debt owed to the FLRA.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or *Federal employee* means a current employee of the FLRA or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States, or the National Guard.

Executive Director means the Executive Director of the FLRA or his or her designee.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900 through 904.

Financial Management Service means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

FLRA means the Federal Labor Relations Authority and all of its components.

FLRA debt means a debt that a person owes the FLRA.

Payment agency or *Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The ''payment agency'' may be the agency that employs the debtor. In some cases, the FLRA may be both the creditor agency and the payment agency.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Salary offset means a type of administrative offset to collect, from the current pay account of a Federal employee, a debt that the employee owes.

Tax refund offset is defined in 31 CFR 285.2(a).

Treasury Department means the United States Department of the Treasury. *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), 42 U.S.C. 404(b), or any other law.

§ 2418.2 Why is the FLRA issuing these regulations, and what do they cover?

(a) *Scope.* This part provides procedures for the collection of FLRA debts. This part also provides procedures for collection of other debts owed to the United States when the FLRA receives, from another agency, a request for offset of an FLRA payment (for example, when an FLRA employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to the FLRA when collecting an FLRA debt, to persons who owe FLRA debts, and to Federal agencies requesting offset of a payment issued by the FLRA as a payment agency (including salary payments to FLRA employees).

(2) This part does not apply to tax debts or to any debt for which there is an indication of fraud or misrepresentation, as described in 31 CFR 900.3 of the FCCS, unless the Department of Justice returns the debt to the FLRA for handling.

(3) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part. See, for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes agencies to recover travel advances by offset of up to 100% of a Federal employee's accrued pay. See, also, 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws and other regulations differ from the provisions of this part, those provisions of law and other regulations—and not the provisions of this part—apply to the remission or mitigation of fines, penalties, and forfeitures, as well as debts arising under the tariff laws of the United States.

(c) *Duplication not required.* Nothing in this part requires the FLRA to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(d) *Use of multiple collection remedies allowed.* The FLRA and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order, so that the FLRA may have flexibility in determining which remedies will be most efficient in collecting the particular debt.

§ 2418.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for FLRA operations.

Subpart B—Procedures to Collect FLRA Debts

§ 2418.4 What notice will the FLRA send to a debtor when collecting an FLRA debt?

(a) *Notice requirements.* The FLRA shall aggressively collect FLRA debts. The FLRA shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve an FLRA debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the FLRA's records. Generally, before starting the collection actions described in §§ 2418.5 and 2418.9 through 2418.16, the FLRA will send no more than two written notices to the debtor. The purpose of the notice(s) is to explain why the debt is owed, the amount of the debt, how a debtor may pay the debt or make alternative payment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, the collection remedies available to the FLRA if the debtor refuses to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (see § 2418.5);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The FLRA's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the FLRA (see § 2418.6);

(5) The name, address, and telephone number of a contact person or office within the FLRA;

(6) The FLRA's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's Federal payments, including income-tax

refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (see §§ 2418.10 through 2418.12);

(ii) *Private collection agency.* Refer the debt to a private collection agency (see § 2418.15);

(iii) *Credit-bureau reporting.* Report the debt to a credit bureau (see § 2418.14);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (see § 2418.13);

(v) *Litigation.* Refer the debt to the Department of Justice to initiate litigation to collect the debt (see § 2418.16);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (see § 2418.9);

(7) That Treasury debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (see § 2418.9);

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the FLRA's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see §§ 2418.10(c) and 2418.11(c));

(10) How a debtor may request a hearing if the FLRA intends to garnish the debtor's private-sector (*i.e.,* non-Federal) wages (see § 2418.13(a)), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see § 2418.12(e)), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the FLRA will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That, unless prohibited by contract or statute, amounts paid on or deducted for the debt that are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That 5 U.S.C. 5514 and 31 U.S.C. 3716 govern proceedings with respect to such debt.

(12) How the debtor may request a waiver of the debt, if applicable (see Appendix A of this part);

(13) How the debtor's spouse may claim his or her share of a joint-income-tax refund by filing Form 8379 with the Internal Revenue Service (see *http://www.irs.gov*);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That an employee's involuntary payment of all or any portion of a debt being collected will not be construed as a waiver of any rights that the employee may have under any provision of contract or law, unless there are statutory, regulatory, or contractual provisions to the contrary; and

(16) That the debtor should advise the FLRA of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* The FLRA may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (16) of this section if the FLRA, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* The FLRA will respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. See 31 CFR part 901.

§ 2418.5 How will the FLRA add interest, penalty charges, and administrative costs to an FLRA debt?

(a) *Assessment and notice.* The FLRA shall assess interest, penalties, and administrative costs on FLRA debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at the rate of 6% per year, or such other higher rate as authorized by law. The FLRA shall determine administrative costs, that is, the costs of processing and handling a delinquent debt. In the notice to the debtor described in § 2418.4, the FLRA must explain how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, the FLRA may not charge interest if the amount due on the debt is paid within 30 days after the date from which the interest accrues. See 31 U.S.C. 3717(d). The FLRA may waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the FLRA's best interest to collect such charges, in accordance with FLRA guidelines for waiving claims against FLRA employees for erroneous overpayments. See appendix A of this part.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties, and administrative costs will begin and continue to accrue 30 days after notice is given to the employee and during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). The FLRA may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the FLRA's best interest, in accordance with FLRA guidelines for waiving claims against FLRA employees for erroneous overpayments. See appendix A of this part.

§ 2418.6 When will the FLRA allow a debtor to pay an FLRA debt in installments instead of one lump sum?

If a debtor is financially unable to pay the debt in one lump sum, then the FLRA may accept payment of an FLRA debt in regular installments, in accordance with 31 CFR 901.8.

§ 2418.7 When will the FLRA compromise an FLRA debt?

If the FLRA cannot collect the full amount of an FLRA debt, then the FLRA may compromise the debt in accordance with 31 CFR part 902.

§ 2418.8 When will the FLRA suspend or terminate debt collection on an FLRA debt?

If, after pursuing all appropriate means of collection, the FLRA determines that an FLRA debt is uncollectible, then the FLRA may suspend or terminate debt-collection activity in accordance with the provisions of 31 CFR part 903 and the FLRA's policies and procedures.

§ 2418.9 When will the FLRA transfer an FLRA debt to the Treasury Department's Financial Management Service for collection?

(a) The FLRA will transfer any eligible debt that is more than 180 days delinquent to the Financial Management Service for debt-collection services, a process known as ''cross-servicing.'' See 31 U.S.C. 3711(g) and 31 CFR 285.12. The FLRA may transfer debts delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. See 31 CFR 285.12(c)(2). Appropriate action includes, but is not limited to: Contact with the debtor; referral of the debt to the Treasury Offset Program, private collection agencies, or the Department of Justice; reporting of the debt to credit bureaus; and administrative wage garnishment.

(b) At least sixty (60) days before transferring an FLRA debt to the Financial Management Service, the FLRA will send notice to the debtor as required by § 2418.4. The FLRA will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, the FLRA will certify its compliance with all applicable due-process and other requirements as described in this part and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt-collection process, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by administrative and tax-refund offset. See 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Financial Management Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income-tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 2418.10 How will the FLRA use administrative offset (offset of non-tax Federal payments) to collect an FLRA debt?

(a) *Centralized administrative offset through the Treasury Offset Pro*gram. (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of Federal payments. See § 2418.9(c). If not already transferred to the Financial Management Service under § 2418.9, the FLRA will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. See 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). The FLRA may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least sixty (60) days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. The FLRA will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, the FLRA will certify its compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for FLRA debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, the FLRA may collect past-due, legally enforceable FLRA debts through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, the FLRA may offset a payment internally or make an offset request directly to a Federal payment agency.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) When referring a debt for offset under this paragraph (b), the FLRA will certify, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, the FLRA will certify its compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 2418.4 shall explain to the debtor how to request an administrative review of the FLRA's determination that the debtor owes an FLRA debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, the FLRA will provide the debtor with a ''paper hearing'' based upon a review of the written record, including documentation provided by the debtor. The FLRA shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the FLRA determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the FLRA will carefully document all significant matters discussed at the hearing. The FLRA may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), the FLRA may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 2418.4, or completing the procedures

described in paragraph (b)(2) and (c) of this section. The FLRA shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 2418.11 How will the FLRA use tax-refund offset to collect an FLRA debt?

(a) *Tax-refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect FLRA debts by the offset of tax refunds and other Federal payments. See § 2418.9(c). If not already transferred to the Financial Management Service under § 2418.9, the FLRA will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax-refund offset. See 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days before referring a debt to the Treasury Offset Program, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. The FLRA will certify to the Financial Management Service's Treasury Offset Program, in writing, that the debt is past due and legally enforceable in the amount submitted and that the FLRA has made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, the FLRA will certify its compliance with all applicable due-process and other requirements described in this part and other Federal laws. See 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 2418.4 shall provide the debtor with at least 60 days prior to the initiation of tax-refund offset to request an administrative review as described in § 2418.10(c). The FLRA may suspend collection through tax-refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 2418.12 How will the FLRA offset a Federal employee's salary to collect an FLRA debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts that FLRA employees and other Federal employees owe to the United States. If a Federal employee owes an FLRA debt, then the FLRA may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than the FLRA may collect debt from the salary of an FLRA employee, see §§ 2418.19 and 2418.20.

(2) Nothing in this part requires the FLRA to collect an FLRA debt in accordance with this section if Federal law allows otherwise. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) The FLRA may use the administrative-wage-garnishment procedure described in § 2418.13 to collect a debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 2418.9(a), the FLRA will refer FLRA debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, the FLRA will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1109.

(c) *Non-centralized salary offset for FLRA debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, the FLRA may collect delinquent FLRA debts through non-centralized salary offset. See 5 CFR 550.1109. In these cases, the FLRA may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt that a Federal employee owes. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) When referring a debt for offset, the FLRA will certify to the payment agency, in writing, that the debt is valid, delinquent, and legally enforceable in the amount stated, and that there are no legal bars to collection by salary offset. In addition, the FLRA will certify that all due-process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due-process and other prerequisites for salary offset.

(d) *When prior notice not required.* The FLRA is not required to provide prior notice to an employee when the FLRA makes the following adjustments to an FLRA employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal-benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $ 50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures*—(1) *Request for a hearing.* A Federal employee who has received a notice that his or her FLRA debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 2418.4. See § 2418.4(a)(11). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, then the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, then the employee will have waived the right to a hearing, and salary offset may be initiated. However, the FLRA will accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* The FLRA must obtain the services of a hearing official who is not under the supervision or control of the Chairman. The FLRA may contact an agent of any agency designated in appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time, and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, then he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, then the employee will have waived the right to a hearing, and salary offset shall be initiated. If the FLRA representative fails to appear at an oral hearing, then the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* The FLRA will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, then the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the FLRA received the request for hearing. If the employee requests a delay in the proceedings, then the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the FLRA shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary-offset process*—(1) *Determination of disposable pay.* The FLRA's Office of the Executive Director will determine the amount of an FLRA employee's disposable pay (as defined in § 2418.1) and will implement salary offset when requested to do so by the FLRA, as described in paragraph (c) of this section, or another agency, as described in § 2418.19. If the debtor is not employed by the FLRA, then the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall normally begin within three official pay periods following receipt of the creditor agency's request for offset.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, then such debt generally will be collected in one lump-sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, or a higher deduction has been ordered by a court under section 124 of Public Law 97–276 (96 Stat. 1195), or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump-sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which the FLRA has requested salary offset, then the payment agency must certify the total amount of its collection and notify the FLRA and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, then it must provide written notification to the payment agency responsible for making such payments that the debtor owes a debt, the amount of the debt, and that the FLRA has complied with the provisions of this section. The FLRA must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all

payments due from his or her former payment agency have been made, then the FLRA may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, the FLRA will collect such monies through the Treasury Offset Program as described in § 2418.9(c).

(3) When an employee transfers to another agency, the FLRA should resume collection with the employee's new payment agency in order to continue salary offset.

§ 2418.13 How will the FLRA use administrative wage garnishment to collect an FLRA debt from a debtor's wages?

(a) The FLRA is authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). The FLRA may use administrative wage garnishment to collect a delinquent FLRA debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 2418.6). At least thirty (30) days before initiating an administrative wage garnishment, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4 of this part, including the requirements of § 2418.4(a)(10). (For debts outstanding more than ten (10) years on or before June 11, 2009, the FLRA will comply with the additional notification requirements of 31 CFR 285.7(d).) For FLRA debts referred to the Financial Management Service under § 2418.9, the FLRA may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 2418.4(a)(10). If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. See 31 CFR 285.11(f)(4). If a debtor's hearing request is not timely, then the FLRA may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. If a hearing is conducted telephonically, all telephonic charges incurred during the hearing will be the responsibility of the agency.

(b) This section does not apply to Federal salary offset, the process by which the FLRA collects debts from the salaries of Federal employees (see § 2418.12).

§ 2418.14 How will the FLRA report FLRA debts to credit bureaus?

The FLRA shall report delinquent FLRA debts to credit bureaus in accordance with 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, ''Policies for Federal Credit Programs and Nontax Receivables.'' For additional information, see Financial Management Service's ''Guide to the Federal Credit Bureau Program,'' which may be found at *http://www.fms.treas.gov/debt.* At least sixty (60) days prior to reporting a delinquent debt to a consumer-reporting agency, the FLRA will send notice to the debtor in accordance with the requirements of § 2418.4. Before disclosing information to a consumer-reporting agency, the FLRA shall provide, on request of a person alleged to be responsible for the delinquent debt, for a review of the obligation of the debtor, including an opportunity for reconsideration of the initial decision on the debt. The FLRA may authorize the Financial Management Service to report to credit bureaus those delinquent FLRA debts that have been transferred to the Financial Management Service under § 2418.9.

§ 2418.15 How will the FLRA refer FLRA debts to private collection agencies?

The FLRA will transfer delinquent FLRA debts to the Financial Management Service to obtain debt-collection services provided by private collection agencies. See § 2418.9.

§ 2418.16 When will the FLRA refer FLRA debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* The FLRA shall refer FLRA debts having a principal balance over $ 100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See §§ 2418.7 and 2418.8; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* The FLRA shall promptly refer to the Department of Justice for litigation delinquent FLRA debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. See 31 CFR part 904. The FLRA may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent FLRA debts that have been transferred to the Financial Management Service under § 2418.9.

§ 2418.17 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes an FLRA debt may, at any time, request a special review by the FLRA of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Child-care or elder-care expenses;

(7) Medical expenses; and

(8) Exceptional expenses, if any.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the FLRA, with supporting documents, showing why the current offset, garnishment, or repayment schedule imposes an extreme financial hardship on the debtor. The FLRA will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The FLRA shall notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, then the FLRA will notify the appropriate agency or other persons about the new terms.

§ 2418.18 Will the FLRA issue a refund if money is erroneously collected on a debt?

The FLRA shall promptly refund to a debtor any amount collected on an

FLRA debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part shall not bear interest unless required by law.

Subpart C—Procedures for Offset of FLRA Payments to Collect Debts Owed to Other Federal Agencies

§ 2418.19 How do other Federal agencies use the offset process to collect debts from payments issued by the FLRA?

(a) *Offset of FLRA payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by the FLRA and other Federal agencies, a process known as ''centralized offset.'' When centralized offset is not available or appropriate, any Federal agency may ask the FLRA (when acting as a ''payment agency'') to collect a debt owed to such agency by offsetting funds payable to a debtor by the FLRA, including salary payments issued to FLRA employees. This section and § 2418.20 apply when a Federal agency asks the FLRA to offset a payment issued by the FLRA to a person who owes a debt to the United States.

(2) This subpart does not apply to FLRA debts. See §§ 2418.10 through 2418.12 for offset procedures applicable to FLRA debts.

(3) This subpart does not apply to the collection of non-FLRA debts through tax refund offset. See 31 CFR 285.2 for tax-refund-offset procedures.

(b) *Administrative offset (including salary offset); certification.* The FLRA will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due-process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section shall be sent to the Federal Labor Relations Authority, ATTN: Office of the Executive Director, 1400 K Street NW., Washington, DC 20424.

(d) *Incomplete certification.* The FLRA will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by the FLRA.

(e) *Review.* The FLRA is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When the FLRA will not comply with offset request.* The FLRA will comply with the offset request of another agency unless the FLRA determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the FLRA may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to FLRA.* For purposes of this section, debts owed to the FLRA generally take precedence over debts owed to other agencies. The FLRA may determine whether to pay debts owed to other agencies before paying a debt owed to the FLRA. The FLRA will determine the order in which the debts will be collected based on the best interests of the United States.

§ 2418.20 What does the FLRA do upon receipt of a request to offset the salary of an FLRA employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the FLRA employee.* When the FLRA receives proper certification of a debt owed by one of its employees, the FLRA will begin deductions from the employee's pay at the next officially established pay period. The FLRA will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt that the creditor agency claims is owed, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from FLRA employee's salary.* The amount deducted under § 2418.19(b) will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions shall continue until the FLRA knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount that the debtor and the creditor agency agree upon in writing. See § 2418.12(g) (salary-offset process).

(c) *When the debtor is no longer employed by the FLRA*—(1) *Offset of final and subsequent payments.* If an FLRA employee retires or resigns or if his or her employment otherwise ends before collection of the debt is complete, then the FLRA will continue to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the FLRA. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the FLRA before the debt is paid in full, then the FLRA will certify to the creditor agency the total amount of its collection. If the FLRA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, then the FLRA will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 2418.9(c).

(3) *Notice to the debtor.* The FLRA will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency*—(1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, then the FLRA will notify the creditor agency and will certify the total amount of its collection on the debt. The FLRA will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The FLRA will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* The FLRA will provide a hearing official upon the creditor agency's request with respect to an FLRA employee. See 5 CFR 550.1107(a).

Appendix A to Part 2418—Waiving Claims Against FLRA Employees for Erroneous Payments

Date: May 1, 2015.

Subject: Waiving Claims Against FLRA Employees for Erroneous Payments.

1. Purpose

This appendix establishes the FLRA's policies and procedures for waiving claims by the Government against an employee for erroneous payments of: (1) Pay and allowances (*e.g.,* health and life insurance) and (2) travel, transportation, and relocation expenses and allowances.

2. Background

a. 5 U.S.C. 5584 authorizes the waiver of claims by the United States in whole or in part against an employee arising out of erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances. A waiver may be considered when collection of the claim would be against equity and good conscience and not in the best interest of the United States, provided that there does not exist, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

b. The General Accounting Office Act of 1996 (Pub. L. 104–316), Title I, section 103(d), enacted October 19, 1996, amended 5 U.S.C. 5584 by transferring the authority to waive claims for erroneous payments exceeding $1,500 from the Comptroller General of the United States to the Office of Management and Budget (OMB). OMB subsequently redelegated this waiver authority to the executive agency that made the erroneous payment. The authority to waive claims not exceeding $1,500, which was vested in the head of each agency prior to the enactment of Public Law 104–316, was unaffected by the Act.

c. 5 U.S.C. 5514 authorizes the head of each agency, upon a determination that an employee is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination, to deduct up to 15%, or a greater amount if agreed to by the employee or a higher deduction has been ordered by a court under section 124 of Public Law 97–276 (96 Stat. 1195), from the employee's pay at officially established pay intervals in order to repay the debt.

3. Delegation

The Executive Director is delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, in accordance with the limitations and standards in 5 U.S.C. 5584.

4. Responsibilities

The Office of the Executive Director shall:

(1) Promptly notify an employee upon discovery of an erroneous payment to that employee;

(2) Promptly act to collect the erroneous overpayment, following established debt-collection policies and procedures;

(3) Establish time frames for employees to request a waiver in writing and for the Executive Director to review the waiver request. These time frames must take into consideration the responsibilities of the United States to take prompt action to pursue enforced collection on overdue debts, which may arise from erroneous payments.

(4) Notify employees whose requests for waiver of claims are denied in whole or in part of the basis for the denial.

(5) Pay a refund when appropriate if a waiver is granted;

(6) Fulfill all labor-relations responsibilities when implementing the provisions of this appendix; and

(7) Fulfill any other responsibility of the agency imposed by 5 U.S.C. 5584 or other applicable laws and regulations.

Additionally, the Office of the Executive Director may initiate a waiver application during the processing of a claim under 5 CFR part 2418.

5. Reporting Requirements

a. The FLRA shall maintain a register of waiver actions. The register shall cover each fiscal year and be prepared by December 31 of each year for the preceding fiscal year. The register shall contain the following information:

(1) The total amount waived by the FLRA;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number and dollar amount of waiver applications granted in part and denied in part, and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety; and

(5) The number of waiver applications referred to the Executive Director for initial action.

b. The FLRA shall retain a written record of each waiver action for 6 years and 3 months. At a minimum, the written record shall contain:

(1) The FLRA's summary of the events surrounding the erroneous payment;

(2) Any written comments submitted by the employee from whom collection is sought;

(3) An account of the waiver action taken and the reasons for such action; and

(4) Other pertinent information such as any action taken to refund amounts repaid.

6. Effect of Request for Waiver

A request for a waiver of a claim shall not affect an employee's opportunity under 5 U.S.C. 5514(a)(2)(D) for a hearing on the determination of the agency concerning the existence or the amount of the debt, or the terms of the repayment schedule. A request by an employee for a hearing under 5 U.S.C. 5514(a)(2)(D) shall not affect an employee's right to request a waiver of the claim. The determination whether to waive a claim may be made at the discretion of the deciding official either before or after a final decision is rendered pursuant to 5 U.S.C. 5514(a)(2)(D) concerning the existence or the amount of the debt, or the terms of the repayment schedule.

7. Guidelines for Determining Requests

a. A request for a waiver shall not be granted if the deciding official determines there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. There are no exceptions to this rule for financial hardship or otherwise.

(1) ''Fault'' exists if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed, but failed to take action to have it corrected. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person. Pertinent considerations in finding fault include whether:

(a) The payment resulted from the employee's incorrect, but not fraudulent, statement that the employee should have known was incorrect;

(b) The payment resulted from the employee's failure to disclose material facts that were in the employee's possession and that the employee should have known to be material; or

(c) The employee accepted a payment, that the employee knew or should have known to be erroneous.

(2) Every case must be examined in light of its particular facts. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.

b. If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the request for a waiver must be denied.

c. If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the employee is not automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining whether collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(1) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(2) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(a) To establish that a valuable right has been relinquished, it must be shown that the right was, in fact, valuable; that it cannot be

regained; and that the action was based chiefly or solely on reliance on the overpayment.

(b) To establish that the employee's position has changed for the worse, it must be shown that the decision would not have been made but for the overpayment, and that the decision resulted in a loss.

(c) An example of a ''detrimental reliance'' would be a decision to sign a lease for a more expensive apartment based chiefly or solely upon reliance on an erroneous calculation of salary, and the funds spent for rent cannot be recovered.

(3) The cost of collecting the claim equals or exceeds the amount of the claim;

(4) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(5) Whether failure to make restitution would result in unfair gain to the employee;

(6) Whether recovery of the claim would be unconscionable under the circumstances.

d. The burden is on the employee to demonstrate that collection of the claim would be against equity and good conscience and not in the best interest of the United States.

8. Authorities

a. 5 U.S.C. 5584, ''Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances.''

b. 31 U.S.C. 3711, ''Collection and Compromise.''

c. 31 U.S.C. 3716, ''Administrative Offset.''

d. 31 U.S.C. 3717, ''Interest and Penalty on Claims.''

e. 5 CFR part 550, subpart K, ''Collection by Offset from Indebted Government Employees.''

f. 31 CFR part 5, subpart B, ''Salary Offset.''

g. Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316, OMB, December 17, 1996.

9. Cancellation

FLRA Internal Regulation 2790, dated December 29, 1986, is superseded.

[FR Doc. 2015–09999 Filed 4–30–15; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0936; Directorate Identifier 2015–NM–058–AD; Amendment 39–18153; AD 2015–09–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 787 airplanes. This AD requires a repetitive maintenance task for electrical power deactivation on Model 787 airplanes. This AD was prompted by the determination that a Model 787 airplane that has been powered continuously for 248 days can lose all alternating current (AC) electrical power due to the generator control units (GCUs) simultaneously going into failsafe mode. This condition is caused by a software counter internal to the GCUs that will overflow after 248 days of continuous power. We are issuing this AD to prevent loss of all AC electrical power, which could result in loss of control of the airplane.

DATES: This AD is effective May 1, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 1, 2015.

We must receive comments on this AD by June 15, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0936.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0936; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6490; fax: 425–917–6590; email: *Kelly.McGuckin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We have been advised by Boeing of an issue identified during laboratory testing. The software counter internal to the generator control units (GCUs) will overflow after 248 days of continuous power, causing that GCU to go into failsafe mode. If the four main GCUs (associated with the engine mounted generators) were powered up at the same time, after 248 days of continuous power, all four GCUs will go into failsafe mode at the same time, resulting in a loss of all AC electrical power regardless of flight phase.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires a repetitive maintenance task for electrical power deactivation.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a GCU software upgrade that will address the unsafe condition identified in this AD. Once this software is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule. If the four main GCUs were

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3651
DATE 03/04/13

SUBJECT: DISMISSAL AND CLOSURE POLICY

FLRA Dismissal and Closure Policy

I. Introduction

This Instruction covers employees of the Federal Labor Relations Authority (FLRA) whose permanent duty stations are located in Washington, D.C. and in other locations. The procedures applicable to employees in the Washington, D.C. area are intended to be consistent with and are supplemented by the *Washington, DC Area Dismissal and Closure Procedures* announced by the Office of Personnel Management (OPM) in November 2012.

This Instruction replaces Employee Information Bulletin No. 99-04 ("Procedures for Foul Weather and Other Emergencies") dated December 24, 1998. As appropriate, this Instruction must be read in conjunction with FLRA Instructions 3630.1A ("Leave Administration"); 3640 ("Alternative Work Schedules"); and 3650 ("Flexiplace").

II. Purpose

The purposes of this Instruction are to provide updated procedures and guidance that will help managers and employees to: (1) understand the meaning of various OPM operating status announcements pertaining to the Washington, D.C. area and what actions they may take in response to such announcements; and (2) determine what operating status is appropriate for offices outside the Washington, D.C. area, how to communicate those determinations to employees, and what actions employees in those offices may take in response.

III. The Washington, D.C. Area

A. OPM Responsibilities

The *Washington, DC Area Dismissal and Closure Procedures* established by OPM apply to employees in federal executive offices located inside the "Washington Capital Beltway," which includes all employees who work in the FLRA Headquarters Building. And the Director of OPM is responsible for deciding the status of federal operations and communicating decisions to appropriate agency personnel.

B. FLRA Responsibilities

The FLRA is responsible for implementing OPM procedures and for establishing agency policies and procedures consistent with OPM's requirements. In the event of area-wide-work

disruptions, all agencies, including the FLRA, are expected to adhere to OPM status announcements and to avoid independent action. But the FLRA has authority to release employees and/or close individual facilities on a localized, building-by-building basis during localized emergencies, such as a building fire or limited flooding.

C. Communicating Operating Status

OPM's decision regarding the operating status of federal offices is communicated to various news and media outlets as well as agency human resource officers and other agency officials. FLRA officials will make every reasonable attempt to notify employees of the operating status at the FLRA Headquarters Building as soon as practicable after receipt of OPM's decision through email and, as practicable, notice posting on the FLRA website. Employees also should take reasonable steps to ascertain the operating status by consulting: (1) FLRA and/or OPM websites and (2) television and/or radio news programs.

IV. FLRA Locations Outside the Washington, D.C. Area

A. Federal Executive Boards

Federal Executive Boards (FEBs) are established by direction of the President to strengthen the management and administration of federal executive branch activities in various metropolitan areas of the United States, including Atlanta, Boston, Chicago, Dallas-Fort Worth, Denver, and San Francisco. FEBs are organized and function under the authority of the Director of OPM. Among other things, and subject to the guidance of the Director of OPM, FEBs are responsible for "emergency operations, such as under hazardous weather conditions . . . and communicating related leave policies." 5 C.F.R. 960.107(c)(6). In fulfilling this responsibility, an FEB may notify local agency managers of its recommendation regarding the appropriate operating status due to weather or other conditions. However, these recommendations are *advisory only*; final determination regarding operating status in each agency, including an FLRA Regional Office, is the responsibility of agency management. The FLRA recognizes that, while the final determinations are made by agency management, it is desirable to present uniform government policy and to discourage disparities among agencies.

B. FLRA Responsibilities

In FLRA locations outside the Washington, D.C. area, the regional director in charge of the affected office, in consultation with the Deputy General Counsel, will determine the appropriate operating status of the regional office. The operating status determined appropriate must be one of those listed by OPM in the *Washington, DC Area Dismissal and Closure Procedures*.

C. Communicating Operating Status

Operating status determinations are communicated to regional office employees by telephone or email. In some situations, the determinations may be posted on the FLRA website as well.

V. Meanings of Different Operational Status Announcements

The appendix to this Instruction identifies the various operational status announcements that may occur in different situations and what the announcements mean to employees.

VI. Effective Date

The policies addressed in this Instruction are effective immediately and replace any prior conflicting FLRA policies.

Sarah Whittle Spooner

3/4/13

Date

Appendix: OPM Announcements on the Status of Federal Government Operations in the Washington, DC, Area

STATUS OF FEDERAL GOVERNMENT OPERATIONS WASHINGTON, DC, AREA	
The U.S. Office of Personnel Management (OPM) provides the following announcements to the media when a disruption occurs before or during the workday in the Washington, DC, area.	
Announcement	**What Announcement Means**
OPEN	"Federal agencies in the Washington, DC, area are **OPEN.**" Employees are expected to report to their worksites or begin telework on time. Normal operating procedures are in effect. Employees account for their hours of work by **WATS**: • **W**orking at a worksite in the DC area, • **A**lternative work schedules (AWS) day off, • **T**eleworking, or • **S**cheduled leave or other paid time off.

OPEN WITH OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK	"Federal agencies in the Washington, DC, area are **OPEN** and employees have the **OPTION** for **UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK**." ***Non-Emergency Employees*** must notify their supervisor of their intent to use unscheduled leave or unscheduled telework (if telework-ready). In accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements, non-emergency employees have the option to use: (1) earned annual leave, compensatory time off, credit hours, or sick leave, as appropriate; (2) leave without pay; (3) their flexible work schedule day off or rearrange their work hours under flexible work schedules; or (4) unscheduled telework (if telework-ready). ***Telework-Ready Employees*** who are regularly scheduled to perform telework or who notify their supervisor of their intention to perform unscheduled telework must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both, for the entire workday in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Emergency Employees*** are expected to report to their worksites on time unless otherwise directed by their agencies.

OPEN – XX HOUR(S) DELAYED ARRIVAL – WITH OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK	"Federal agencies in the Washington, DC, area are **OPEN** under **XX HOUR(S) DELAYED ARRIVAL** and employees have the **OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK.** Employees should plan to arrive for work no more than XX hour(s) later than they would be expected to arrive. " ***Non-Emergency Employees*** who report to the office will be granted excused absence (administrative leave) for up to XX hour(s) past their expected arrival time. In accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements, non-emergency employees may notify their supervisor of their intent to use: (1) earned annual leave, compensatory time off, credit hours, or sick leave, as appropriate; (2) leave without pay; (3) their flexible work schedule day off or rearrange their work hours under flexible work schedules; or (4) unscheduled telework (if telework-ready). (Employees who request unscheduled leave should be charged leave for the entire workday.) ***Telework-Ready Employees*** who are regularly scheduled to perform telework or who notify their supervisor of their intention to perform unscheduled telework must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both, for the entire workday in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Pre-approved Leave.*** Employees on pre-approved leave for the entire workday or employees who requested unscheduled leave for the entire workday should be charged leave for the entire day. ***Emergency Employees*** are expected to report to their worksite on time unless otherwise directed by their agencies.

Note: Employees will not be charged unscheduled leave for the entire workday if they combine unscheduled telework with unscheduled leave.

OPEN – DELAYED ARRIVAL – EMPLOYEES SHOULD REMAIN OFF THE ROADS UNTIL XX:XX. FEDERAL OFFICES WILL OPEN AT YY:YY. EMPLOYEES HAVE THE OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK	"Federal agencies in the Washington, DC, area are **OPEN** under a **DELAYED ARRIVAL.** Employees should remain **OFF THE ROADS** until **XX:XX. FEDERAL OFFICES** in the Washington, DC, area will **OPEN at YY:YY**. Employees have the **OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK**." ***Non-Emergency Employees*** who report to the office will be granted excused absence (administrative leave) up until the time when Federal offices open. In accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements, non-emergency employees may notify their supervisor of their intent to use: (1) earned annual leave, compensatory time off, credit hours, or sick leave, as appropriate; (2) leave without pay; (3) their flexible work schedule day off or rearrange their work hours under flexible work schedules; or (4) unscheduled telework (if telework-ready). (Employees who request unscheduled leave should be charged leave for the entire workday.) ***Telework-Ready Employees*** who are regularly scheduled to perform telework or who notify their supervisor of their intention to perform unscheduled telework must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both, for the entire workday in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Pre-approved Leave.*** Employees on pre-approved leave for the entire workday should be charged leave for the entire workday. ***Emergency Employees*** are expected to report to their worksite on time unless otherwise directed by their agencies.

Note: Employees will not be charged unscheduled leave for the entire workday if they combine unscheduled telework with unscheduled leave.

OPEN - XX HOUR(S) STAGGERED EARLY DEPARTURE	"Federal agencies in the Washington, DC, area are **OPEN**. Employees should depart **XX HOUR(S)** earlier than their normal departure times and may request **UNSCHEDULED LEAVE** to depart prior to their staggered departure times." ***Non-emergency Employees*:** **Excused Absence.** Non-emergency employees will be dismissed from their office XX hour(s) early relative to their normal departure times and will be granted excused absence (administrative leave) for the number of hours remaining in their workday. **Departure Prior to Early Departure Time.** Non-emergency employees who depart prior to their staggered early departure times may request to use unscheduled leave. Such employees will be charged leave for the remainder of their workday and will not be granted excused absence. ***Telework-Ready Employees*** performing telework must continue to telework or take unscheduled leave, or a combination of both for the entire workday or the remainder of the workday, as applicable, in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Pre-approved leave.*** An employee on pre-approved leave for the entire workday or an employee who has requested unscheduled leave before an early departure policy is announced should continue to be charged leave for the remainder of the workday. ***Emergency Employees*** are expected to remain at their worksite unless otherwise directed by their agencies.

OPEN - XX HOUR(S) STAGGERED EARLY DEPARTURE – ALL EMPLOYEES MUST DEPART NO LATER THAN XX: XX AT WHICH TIME FEDERAL OFFICES ARE CLOSED	"Federal agencies in the Washington, DC, area are **OPEN**. Employees should depart **XX HOUR(S)** earlier than their normal departure time and may request **UNSCHEDULED LEAVE** to depart prior to their staggered departure time. All employees **MUST DEPART** at no later than XX: XX at which time **FEDERAL OFFICES** in the Washington, DC, area are **CLOSED**." ***Non-emergency Employees*:** **Excused Absence.** Non-emergency employees will be dismissed from their office early relative to their normal departure time or at the final departure time and will be granted excused absence (administrative leave) for the number of hours remaining in their workday beyond their early departure time or their final departure time. **Departure Prior to Early Departure Time**. Non-emergency employees who depart prior to their staggered early departure time or final departure time may request to use unscheduled leave. Such employees will be charged leave for the remainder of their workday and will not be granted excused absence. ***Pre-approved leave.*** Employees on pre-approved leave for the entire workday or employees who have requested unscheduled leave before an early departure policy is announced should continue to be charged annual or sick leave for the entire day or remainder of the workday, as applicable. ***Telework-Ready Employees*** performing telework must continue to telework or take unscheduled leave, or a combination of both for the entire workday in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Emergency Employees*** are expected to remain at their worksite unless otherwise directed by their agencies.

IMMEDIATE DEPARTURE – FEDERAL OFFICES ARE CLOSED	"**IMMEDIATE DEPARTURE.** Employees should depart **IMMEDIATELY**. **FEDERAL OFFICES** in the Washington, DC, area are **CLOSED.**" ***Non-emergency employees*** should depart immediately from the office. All non-emergency employees will be granted excused absence (administrative leave) for the number of hours remaining in their workday unless they are: • on official travel outside of the Washington, DC, area, • on leave without pay, or • on an alternative work schedule (AWS) day off. ***Telework-Ready Employees*** performing telework must continue to telework for the entire workday or take unscheduled leave for the remainder of the workday, as applicable in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Emergency Employees*** are expected to remain at their worksite unless otherwise directed by their agencies

FEDERAL OFFICES ARE CLOSED – EMERGENCY AND TELEWORK-READY EMPLOYEES MUST FOLLOW THEIR AGENCY'S POLICIES	"**FEDERAL OFFICES** in the Washington, DC, area are **CLOSED**. Emergency and telework-ready employees required to work must follow their agency's policies, including written telework agreements." ***Non-emergency employees*** (including employees on pre-approved paid leave) will be granted excused absence (administrative leave) for the number of hours they were scheduled to work unless they are: • required to telework, • on official travel outside of the Washington, DC, area, • on leave without pay, or • on an alternative work schedule (AWS) day off. ***Telework-Ready Employees*** who are scheduled to perform telework on the effective day of the announcement or who are required to perform telework on a day when Federal offices are closed must telework the entire workday or request leave, or a combination of both, in accordance with their agency's policies and procedures, subject to any applicable collective bargaining requirements. ***Emergency Employees*** are expected to report to their worksite unless otherwise directed by their agencies.

SHELTER-IN-PLACE	"**FEDERAL OFFICES** in the Washington, DC, area are under **SHELTER-IN-PLACE** procedures and are **CLOSED TO THE PUBLIC**." ***Employees Located at Agency Worksite.*** All employees should follow their agency's emergency procedures for shelter-in-place. Employees should remain in their designated safe area until they are notified by agency officials that they may return to the office or leave the worksite. ***Telework-Ready Employees*** performing telework are expected to continue working during the shelter-in-place unless affected by the emergency or otherwise notified by their agencies.

Note: As a general principle, OPM reserves the right to issue a new or hybrid operating status announcement at any time, depending on the particulars of an emergency, for the safety of employees and continuity of Government operations. OPM will always attempt to use the published operating status announcements.

FEDERAL LABOR RELATIONS AUTHORITY

DRUG-FREE WORKPLACE PLAN

FLRA 3880.1A

Federal Labor Relations Authority Drug-Free Workplace Plan

I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off-duty. In a letter to all executive branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all Federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the country, the Federal Government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Federal Labor Relations Authority (FLRA or Agency) is concerned with the well-being of its employees, the successful accomplishment of Agency mission, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is incompatible with Federal service.

On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under section 503 of Title V of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987) (hereinafter the "Act"), in an attempt to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of

the Federal Government's drug testing program.

The purpose of the FLRA Drug-Free Workplace Plan (Plan) is to set forth objectives, policies, procedures, and guidelines to achieve a drug-free Federal workplace, consistent with the Executive Order and section 503 of the Act.

B. Statement of Policy

The FLRA, as a result of its Government-wide labor-management relations responsibilities, as well as the sensitive nature of its work, has a compelling obligation to eliminate illegal drug use from its workplace.

The FLRA's responsibility for providing leadership and guidance to the Federal labor-management community and for administering the program as a neutral third party requires that FLRA staff perform their duties with the utmost integrity, objectivity, and reasonableness. Use of illegal drugs by Agency staff not only could impair the quality and fairness of investigations and decisions but could undermine the trust and confidence the Federal labor-management community has in the program.

The mark of a successful drug-free workplace program also depends on how well the FLRA informs its employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching the FLRA's goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (1) employee assistance;
(2) supervisory training; (3) employee education; and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

It is the FLRA's policy that its workplace be free from the illegal use, possession, or distribution of controlled substances (as specified in Schedules I through V, as defined in 21 U.S.C. § 802(6) and listed in Part B, Subchapter 13 of that title) by the officers and employees of the FLRA. The possession and distribution of controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated and that the FLRA workplace be safe, healthful, productive, and secure.

C. Nature, Frequency, and Type of Drug Testing to be Instituted

Section 503 of the Act requires the FLRA Plan to specify the nature, frequency, and type of drug testing to be instituted. The FLRA Plan includes the following types of drug testing: (1) random testing of those employees in sensitive positions that have been designated as testing designated positions; (2) reasonable suspicion testing; (3) accident or unsafe practice testing; (4) voluntary testing,

and (5) testing as part of, or as a follow-up to, counseling or rehabilitation.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Appendix A, Section XI.A., Section XI.B., and Section XI.C., respectively. The Chair reserves the right to increase or decrease the frequency of testing based on the Agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under the Executive Order. A decision to increase or decrease the frequency of follow-up testing will be made in consultation with the General Counsel, the other Authority Members, or the Chair, FSIP, as appropriate.

D. Drugs for Which Individuals are Tested

Section 503 of the Act requires the FLRA to specify the drugs for which individuals shall be tested. The FLRA will test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates, and Phencyclidine (PCP). In addition, when conducting reasonable suspicion tests, the FLRA may test for any drug listed in Schedule I or II of the Controlled Substances Act.

E. Scope

Upon certification by the Department of Health and Human Services in accordance with section 503 of the Act, this Plan shall be effective immediately for all FLRA employees.

F. Union Cooperation

The active participation and support of the Union of Authority Employees (UAE) can contribute to the success of this program. Management will seek ways in which the UAE might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe the provisions of any existing FLRA/UAE Agreement and will include UAE representatives in general orientation programs.

G. References

1. Authorities

a. Executive Order 12564;

b. Executive Order 10450;

c. Executive Order 12356;

d. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987);

e. Mandatory Guidelines for Federal Drug Testing Programs, which include Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 Fed. Reg. 11970 (1988), as revised (1994);

f. Civil Service Reform Act of 1978, Pub. L. 95-454;

g. Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records;

h. The Privacy Act of 1974 (5 U.S.C. § 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;

i. 49 C.F.R. Part 10, implementing the Privacy Act of 1974 within the FLRA;

j. Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570; and

k. Section 628 of the Treasury, Postal Service, and General Government Appropriations Act of 1989, Pub. L. 100-440, as amended.

II. DEFINITIONS

A. **Employee Assistance Program (EAP)** means the FLRA approved counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

B. **Employee Assistance Program Administrator** means the individual responsible for ensuring the development, implementation and review of the Agency EAP. The Director, Human Resources Division is designated as the FLRA's EAP Administrator.

C. **Employee Assistance Program Coordinator** means the individual designated by the EAP Administrator to be responsible for implementing and operating the EAP within the FLRA by providing, directly or through contractor(s), counseling; treatment; and education services to employees and supervisors regarding the FLRA EAP. A Personnel Management Specialist in the Human Resources Division will serve as the EAP Coordinator.

D. **Medical Review Officer (MRO)** means the individual responsible for receiving laboratory results generated from the FLRA Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

E. **Illegal Drugs** means a controlled substance included in Schedule I or II, as defined by § 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

F. **Random Testing** means a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be:

1. Uniform-unannounced testing of testing designated employees occupying a specified area, element or position; or

2. A statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

G. **Employees in Sensitive Positions** means:

1. Employees in positions designated by the Chair, in consultation with the General Counsel, the other Authority Members, or the Chair, FSIP, as appropriate, as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive or employees in positions designated by the individuals listed above as sensitive in accordance with Executive Order No. 10450, as amended;

2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Chair under section 4 of Executive Order No. 12356;

3. Individuals serving under Presidential appointments;

4. Law enforcement officers as defined in 5 U.S.C. §§ 8331(20) and 8401(17);

5. Employees authorized to carry firearms;

6. Motor vehicle operators carrying passengers; or

7. Other positions that the Chair, in consultation with the General Counsel, the other Authority Members, or the Chair, FSIP, as appropriate, determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

H. **Supervisor** means an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment. 5 U.S.C. § 7103(a)(10).

I. **Testing Designated Positions** means employment positions within the FLRA which have been designated for random testing under Section IX.B. of this Plan.

J. **Verified Positive Test Result** means a test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), and reviewed and verified by the Medical Review Officer in accordance with this Plan and the HHS Guidelines.

III. EMPLOYEE ASSISTANCE PROGRAM

A. Function

The FLRA EAP plays an important role in preventing and resolving employee drug use by: demonstrating the FLRA's commitment to eliminating illegal drug use; providing employees with an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities if the problems are drug-related; and following-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall:

1. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees' progress through treatment and rehabilitation;

2. Provide needed education and training to all levels of the FLRA on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues;

3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records is maintained in accordance with Section XIII.

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to FLRA employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems.

In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the factors in Section VI.D.5. in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave and Allowance

Employees shall be allowed up to 1 hour (or more as necessitated by travel time) of excused absence for each counseling session, up to a maximum of eight sessions during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment cannot be excused absences but must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XIII of the Plan relating to records and confidentiality.

E. Structure

The Office of the Executive Director, Human Resources Division is responsible for oversight and implementation of the FLRA EAP, and will provide direction and promotion of the EAP.

The FLRA will provide EAP services to its employees at Headquarters and regional office locations directly and/or through contracts with appropriate providers.

IV. SUPERVISORY TRAINING

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, the FLRA shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by Agency employees. The purpose of supervisory training is to understand:

1. Agency policies relevant to work performance problems, drug use, and the FLRA EAP;

2. The responsibilities of offering EAP services;

3. How employee performance and behavioral changes should be recognized and documented;

4. The roles of the Medical Review Officer, medical staff, supervisors, Human Resources Division personnel, and EAP personnel;

5. The ways to use the FLRA EAP;

6. How the EAP is linked to the performance appraisal and the disciplinary process; and

7. The process of reintegrating employees into the work force.

B. Implementation

The Office of the Executive Director, Human Resources Division is responsible for implementing supervisory training, and developing a training package to ensure that all employees and supervisors are fully informed of the FLRA Drug-Free Workplace Plan.

C. Training Package

Supervisory training is required of all supervisors and may be presented as a separate course, or be included as part of an ongoing supervisory training program. Training shall be

provided as soon as possible after a person assumes supervisory responsibility. Training courses should include:

1. Overall Agency policy;

2. The prevalence of various employee problems with respect to drugs and alcohol;

3. The EAP approach to handling problems including the supervisor's role and relationship to EAP;

4. How to recognize employees with possible problems;

5. Documentation of employee performance or behavior;

6. Skills in confronting employees with possible problems;

7. Agency procedures for referring employees to EAP;

8. Disciplinary action, and removals from sensitive positions as required by section 5(c) of the Executive Order;

9. Reintegration of employees into the work force; and

10. Written materials which the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The EAP Administrator shall offer drug education to all FLRA employees. Drug education

should include education and training for all levels of the FLRA on:

1. Types and effects of drugs;

2. Symptoms of drug use, and the effects on performance and conduct;

3. The relationship of the EAP to the drug testing program; and

4. Other relevant treatment, rehabilitation, and confidentiality issues.

B. Means of Education

Drug education activities may include:

1. Distribution of written materials;

2. Videotapes;

3. Lunchtime employee forums; and

4. Employee drug awareness days.

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator

The Executive Director shall serve as the Agency's Drug Program Coordinator (DPC). The DPC shall be responsible for implementing, directing, administering, and managing the drug program within the FLRA. The DPC shall serve as the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of the program. In carrying out these responsibilities, the DPC shall, among other duties:

1. Arrange for all testing authorized under this Plan;

2. Ensure that all employees subject to random testing receive individual notice as described in Section VII.B. of this Plan, prior to implementation of the program, and

that such employees return a signed acknowledgment of receipt form;

3. Document, through written inspection reports, all results of laboratory inspections conducted;

4. Coordinate with and report to the Chair on DPC activities and findings that may affect the reliability or accuracy of laboratory results; and

5. Publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation.

B. Employee Assistance Program Administrator

The Director, Human Resources Division shall serve as the EAP Administrator who shall:

1. Receive verified positive test results from the Medical Review Officer;

2. Assume the lead role in the development, implementation, and evaluation of the EAP;

3. Supervise and designate the FLRA's EAP Coordinator and assist in establishing field office EAPs; and

4. Prepare consolidated reports on the FLRA's EAP activity.

C. Employee Assistance Program Coordinator

The EAP Coordinator shall be a Personnel Management Specialist in the Human Resources Division. The EAP Coordinator shall (directly or through interagency agreement(s) or contract(s)):

1. Implement and operate the EAP within the FLRA;

2. Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;

3. Coordinate with the Chair, the General Counsel, the other Authority Members, the

Chair, FSIP, the Medical Review Officer and supervisors, as appropriate;

4. Work with the DPC to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;

5. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

6. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;

7. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

8. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such organization:

   a. Name, address, and phone number;

   b. Types of service provided;

   c. Hours of operation, including emergency hours;

   d. The contact person's name and phone number;

   e. Fee structure, including insurance coverage;

   f. Client specialization; and

   g. Other pertinent information; and

9. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

D. Employee Assistance Counselors

The FLRA shall contract for Employee Assistance Counselors who shall:

1. Serve as the initial point of contact for employees who ask or are referred for counseling;

2. Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;

3. Meet the qualifications determined by the EAP counseling service and be trained in counseling employees in the occupational setting, and in identifying drug use;

4. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and

5. Consider the following in making referrals:

    a. Nature and severity of the problem;

    b. Location of the treatment;

    c. Cost of the treatment;

    d. Intensity of the treatment environment;

    e. Availability of inpatient/outpatient care;

    f. Other special needs, such as transportation and child care; and

    g. The preferences of the employee.

E. Medical Review Officer

The FLRA shall contract for the services of a Medical Review Officer (MRO) assigned to carry out the purposes of this Instruction. The MRO shall, among other duties:

1. Receive all laboratory test results;

2. Assure that an individual who has tested positive has been afforded an opportunity to

discuss the test result in accordance with Section XII.D. of this Plan;

3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator and the employee's first-line supervisor (who are responsible for maintaining confidentiality in accordance with Section XIII of this Plan), including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings; and

4. Consistent with confidentiality requirements, coordinate with and report to the Chairman on a regular basis on all activities and findings pertaining to verified positive test results.

F. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the Chair to suit specific program responsibilities, first-line supervisors shall:

1. Attend training sessions on illegal drug use in the workplace;

2. Initiate a drug test based on reasonable suspicion as described in Section X;

3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;

4. Initiate appropriate disciplinary action upon a finding of illegal drug use; and

5. In conjunction with personnel specialists, assist higher-level supervisor(s) and the EAP Administrator in evaluating employee performance and/or personnel problems that may be related to illegal drug use.

A higher-level supervisor shall review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion in accordance with Section X.

G. Implementation

At the direction of the Chair, the DPC shall implement the Drug-Free Workplace Plan within the FLRA and ensure that the Plan is efficiently and effectively accomplished in accordance with this Plan and all other applicable regulations.

H. Government Contractors

The FLRA shall obtain collection, laboratory testing, MRO, and EAP services through interagency agreement(s) and/or contract(s) as necessary to implement this Plan. The DPC shall ensure that contract laboratories chosen to perform the drug screening tests
are duly certified according to sub-part C of the HHS Guidelines, that the position and specific responsibilities of the MRO are established as required by the HHS Guidelines, and that any other contracts to implement this Plan conform to the technical specifications of the HHS Guidelines.

VII. NOTICE

A. General Notice

A general notice from the Chair in consultation with the General Counsel, the other Authority Members, and/or the Chair, FSIP, as appropriate, announcing the testing program, as required by the Executive Order, section 4(a), will be provided to all employees no later than 60 days prior to the implementation date of the Plan. The notices shall be provided immediately upon completion of the congressional certification procedures pursuant to section 503 of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace Plan;

2. That the Plan will include both voluntary testing and mandatory testing (i.e., random testing for testing designated positions (TDP), reasonable suspicion testing, accident and unsafe practice testing, and follow-up testing as part of the EAP);

3. That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that the employee's position has been designated a TDP;

4. The availability of, and procedures necessary, to obtain counseling and rehabilitation through the EAP;

5. The circumstances under which testing may occur;

6. That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;

7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;

8. That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action;

9. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient.

B. Individual Notice

In addition to the information provided in the general notice, an individual notice will be distributed to all employees in Testing Designated Positions (TDPs) explaining:

1. That the employee's position has been designated a "testing designated position";

2. That the employee will have the opportunity to voluntarily admit to being a user of illegal drugs and to receive counseling or rehabilitation, and that an employee who does so and meets the requirements of Section VIII.F. of this Plan shall not be subject to disciplinary action;

3. That the employee's position will be subject to random testing no sooner than 30 days following the notice.

C. Signed Acknowledgment

Each employee in a TDP shall be asked to acknowledge in writing that the employee has received and read the notice which states that the employee's position has been designated for random drug testing, and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal. If the employee refuses to sign the acknowledgment, the DPC shall note on the acknowledgment form that the employee received the notice. This acknowledgment, which is advisory only, shall be collected and maintained by the DPC. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this Plan since the general 60-day notice will previously have notified all Agency employees of the requirement to be drug-free.

D. Administrative Relief

If an employee believes that his or her position has been wrongly designated a TDP, that employee may file an administrative appeal to the Chair who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the Chair within 15 days of notification, setting forth all relevant information. The Chair shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The Chair's decision is final and is not subject to further administrative review.

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

1. Direct observation;

2. Evidence obtained from an arrest or criminal conviction;

3. A verified positive test result; or

4. An employee's voluntary admission.

B. Mandatory Administrative Actions

The FLRA shall refer an employee found to use illegal drugs to the EAP, and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a TDP. However, at the discretion of the Chair, in consultation with the General Counsel, the other Authority Members, or the Chair, FSIP, as appropriate, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

Disciplinary action taken against an employee found to use illegal drugs may include the full

range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with the Executive Order. The FLRA shall initiate disciplinary action against any employee found to use illegal drugs but shall not discipline an employee who voluntarily admits to illegal drug use in

accordance with subsection VIII.F. of this Plan. Such disciplinary action, consistent with the requirements of the FLRA/UAE Agreement and the Civil Service Reform Act and other statutes, FLRA orders, and regulations, may include any of the following measures but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;

2. Placing the employee in an enforced leave status;

3. Suspending the employee for 14 days or less;

4. Suspending the employee for 15 days or more;

5. Suspending the employee until the employee successfully completes the EAP or until the FLRA determines that action other than suspension is more appropriate;

6. Removing the employee from service; and/or

7. Reducing the employee in pay or grade.

D. Initiation of Mandatory Removal From Service

The FLRA shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an EAP as required by the Executive Order after having been found to use illegal drugs;

2. Not refraining from illegal drug use after a first finding of such use.

All letters to propose and decide on a separation action shall be prepared by the appropriate management official(s) in consultation with the Human Resources Division.

E. Refusal to Take Drug Test When Required

An employee who refuses to be tested when so required will be subject to the full range of

disciplinary action, including dismissal. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

Under Executive Order 12564, the FLRA is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline is not required for an employee who: (1) voluntarily admits his or her drug use; (2) completes counseling or rehabilitation through an EAP; and (3) thereafter refrains from drug use.

1. Because the order permits an agency to create a "safe harbor" for an employee who meets all three of these conditions, the FLRA has decided to create such a "safe harbor" and will not initiate disciplinary action against employees who satisfy the provisions of this section.

2. A fundamental purpose of the FLRA's Drug Testing Plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the FLRA will not initiate disciplinary action against any employee who meets all three of these conditions:

   a. Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means;

   b. Obtains counseling or rehabilitation through an EAP; and

   c. Thereafter refrains from using illegal drugs.

   This self-referral option allows any employee to identify himself/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. Consistent with Section XI.A., an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall not subject an employee to discipline assuming the three safe harbor requirements are met.

3. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision is not available to an employee who requests protection under this provision after:

   a. Being asked to provide a urine sample in accordance with this Plan; or

   b. Having been found to have used illegal drugs pursuant to Section VIII.A.1. or

VIII.A.2.

IX. RANDOM TESTING

A. Sensitive Positions Designated for Random Drug Testing

The Executive Order requires random testing for employees in sensitive positions, subject to Agency criteria. As specified in Appendix A of this Plan, the Chair has determined that some of these sensitive positions are TDPs subject to random testing. The position titles designated for random drug testing are listed in Appendix A, along with the criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures.

B. Determining The Testing Designated Position

Among the factors the Chair has considered in designating a Testing Designated Position, are the extent to which the FLRA:

1. Considers its mission inconsistent with illegal drug use;

2. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;

3. Has positions which give employees access to sensitive information; or

4. Authorizes employees to carry firearms.

These positions are characterized by critical safety or security responsibilities as related to the mission of the FLRA. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence. The Chair reserves the right to add or delete positions determined to be TDPs pursuant to the criteria established in the Executive Order and this Plan. Moreover, the Chair has determined, pursuant to 42 U.S.C. § 290ee-1(c)(2), that all positions which have been or will be designated as TDPs under this Plan are "sensitive positions" and are therefore exempted from coverage under 42 U.S.C. § 290ee-1(c)(1), which prohibits disqualification from Federal civilian employment solely on the grounds of prior drug abuse.

C. Implementing Random Testing

In implementing the program of random testing the DPC shall:

1. Ensure that the means of random selection remains confidential; and

2. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the FLRA's duty to achieve a drug-free work force.

The number of sensitive employees occupying TDPs and the frequency with which random tests will be administered are specified in Appendix A.

D. Notification of Selection

An individual selected for random testing shall be notified the same day the test is scheduled, preferably within 2 hours of the scheduled testing. The employee shall be told that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

E. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the Chair concurs that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, administrative or leave without pay); or

2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

X. REASONABLE SUSPICION TESTING

Reasonable suspicion testing is authorized for an employee in a position which is designated for random testing when there is reasonable suspicion that the employee uses illegal drugs whether on or off duty. Testing is also authorized for any employee in any position when there is reasonable suspicion of on-duty use or on-duty impairment.

A. Grounds

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;

2. A pattern of abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into the illegal use, possession, or distribution of controlled substances;

4. Information provided either by reliable and credible sources or independently corroborated; or

5. Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

B. Procedures

If a supervisor suspects an employee of using illegal drugs, the supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. This information shall be forwarded through normal supervisory channels to the Chair or appropriate Authority Member for employees on their respective staffs; the Executive Director for other Authority National Office employees; the Chair, FSIP, for FSIP employees; and the General Counsel for Office of General Counsel employees. The individual designated above must concur in a finding that a reasonable suspicion of illegal drug use exists before any action may be taken.

When higher-level concurrence of a reasonable suspicion determination has been made as described above, the appropriate supervisor will promptly prepare a written report detailing the circumstances which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XII.B.

D. Supervisory Training

In accordance with Section IV, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. ADDITIONAL TYPES OF DRUG TESTING

A. Accident or Unsafe Practice Testing

The FLRA is committed to providing a safe and secure working environment. It also has a legitimate interest in determing the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:

1. The accident results in a death or personal injury requiring immediate hospitalization; or

2. The accident results in damage to government or private property estimated to be in excess of $10,000.00.

If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the appropriate supervisor will present the facts leading to this suspicion to the Chair for approval. Once approval has been obtained and arrangements made for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing.

B. Voluntary Testing

In order to demonstrate their commitment to the FLRA's goal of a drug-free workplace and to set an example for other Federal employees, employees not in TDPs may volunteer for unannounced random testing by notifying the DPC. These employees will then be included in the pool of TDPs subject to random testing, and be subject to the same conditions and procedures, including the

provisions of Section VIII.F. Volunteers shall

remain in the TDP pool until they withdraw from participation by notifying the DPC of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of 1 year. Such employees shall be tested at the frequency stipulated in any written agreement which suspended disciplinary action pending rehabilitation or, in the alternative, at an increased frequency of once a month. Such follow-up testing is distinct from testing which may be imposed as a component of the EAP.

XII. TEST PROCEDURES IN GENERAL

A. Mandatory Guidelines for Federal Drug Testing

The FLRA shall adhere to the Mandatory Guidelines for Federal Drug Testing Programs promulgated by HHS consistent with the authority granted by Executive Order 12564, and to the requirements of section 503 of the Act. Through its contract(s) or interagency agreement(s) effectuated under Section VI.H. of this Plan the FLRA's drug testing program shall have professionally trained collection personnel, quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this Plan shall be permitted to provide urine specimens in private, and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe that the individual may alter or substitute the urine specimen or otherwise tamper with the drug test. In making such a decision, collection site personnel will consider whether:

1. The individual:

   a. Has previously been found by the FLRA to be an illegal drug user; or

   b. Has previously tampered with a sample or attempted to tamper with a drug test; or

2. Facts and circumstances suggest that the individual:

   a. Is an illegal drug user;

   b. Is under the influence of drugs at the time of the test; or

   c. Has equipment, implements, or substances that may be used to tamper with a drug test.

3. The specimen:

   a. Has a temperature outside the range of 32.5-37.7 degrees C (90.5-99.8 degrees F); or

   b. Shows signs of contaminants.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPC to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the HHS Guidelines. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed

positive test could have resulted from legally prescribed medication. Evidence that may be used to justify a positive result includes, but is not limited to:

1. A valid prescription; or

2. A verification from the individual's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary. If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the EAP Administrator upon obtaining a verified positive test result.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the counseling or rehabilitation program, the employee may be exempted from the random TDP pool for a period not to exceed 60 days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the Chair. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XI.C.

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Mandatory Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIII. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose laboratory test results only to the MRO or the staff of the MRO. Any positive result which the MRO justifies by acceptable and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. § 552a, et seq., and section 503(e) of the Act, and may not be released in violation of either Act. The MRO may maintain

only those records necessary for compliance with this Plan. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

In order to comply with section 503(e) of the Act, the results of a drug test of an FLRA employee may not be disclosed without the prior written consent of such employee, unless the disclosure is:

1. To the MRO;

2. To the EAP Administrator of the program in which the employee is receiving counseling or treatment or is otherwise participating;

3. To any supervisory or management official within the FLRA having authority to take adverse personnel action against such employee; or

4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

For purposes of this section, "management official" includes any management, Government, security or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to FLRA personnel, including the DPC, for data collection and other activities necessary to comply with section 503(f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to:

1. Such employee's drug test; and

2. The results of any relevant certification, review, or revocation of proceedings, as referred to in section 503(a)(1)(A)(ii)(III) of the Act.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be

treated as such by anyone authorized to review or compile program records. In order to efficiently implement this Plan and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering with evidence, and any other authorized documentation necessary to implement this Plan.

All records and information of the personnel actions taken on employees with verified positive test results must be forwarded to the Human Resources Division. This information shall remain confidential, in a locked file or a file in a locked office, with only authorized individuals who have a "need-to-know" having access to them.

D. Employee Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this Plan. After a supervisor refers an employee to an EAP, the EAP will maintain all records necessary to carry out its duties. All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 C.F.R. Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. (42 C.F.R. § 2.1 et seq. (1986), revised regulations promulgated in 52 Fed. Reg. 21796, June 9, 1987).

E. Maintenance of Records

The FLRA shall establish a recordkeeping system to maintain the records of the FLRA's Drug-Free Workplace Program consistent with the FLRA's Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act, 5 U.S.C. § 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Chair in consultation with the General Counsel, the other Authority Members, or the Chair, FSIP, as appropriate. The recordkeeping system should include sufficient documents to meet the operational and statistical needs of this Plan, such as:

1. Notices of verified positive test results referred by the MRO;

2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;

3. Anonymous statistical reports; and

4. Other documents the DPC, MRO, or EAP Administrator deem necessary for efficient compliance with this order.

F. Records Maintained By Government Contractors

Any contractor hired to satisfy any part of this Plan shall comply with the confidentiality requirements of this Plan, and all applicable Federal laws, rules, regulations and guidelines.

G. Statistical Information

The DPC shall collect and compile anonymous statistical data for reporting the number of:

1. Random tests, reasonable suspicion tests, or follow-up tests administered;

2. Verified positive test results;

3. Voluntary drug counseling referrals;

4. Involuntary drug counseling referrals;

5. Terminations resulting from refusal to submit to testing;

6. Terminations resulting from alteration of specimens;

7. Terminations resulting from failure to complete a drug abuse counseling program; and

8. Employees who successfully complete EAP.

This data, along with other pertinent information, shall be compiled for inclusion in the FLRA's annual report to Congress required by section 503(f) of the Act. This data shall also be provided to HHS semi-annually to assist in overall program evaluation and to determine whether changes to the HHS Guidelines may be required.

The original plan was certified by the Secretary of Health and Human Services for use effective September 14, 1990. Appendix A was revised and forwarded to the ICG Executive Committee on February 5, 1993. Other revisions were made in October 1996 to reflect the abolishment of the Federal Personnel Manual, as requested by the Division of Workplace Programs, DHHS, to update references to the Human Resources Division and the

Agency Head, and to delete Agency Driver, Backup Agency Driver, and Inspection Assistant (Typing) from the TDP Pool.

This Instruction is effective May 27, 1997.

/s/

Solly Thomas
Executive Director

APPENDIX A

Testing Designated Positions

In making a determination which FLRA position should be "testing designated positions" (TDPs) for purposes of random drug testing under Executive Order 12564, the Chair first determined which positions were properly included in the pool of "sensitive positions" as defined in the Executive Order and the guidance supplement issued by the Office on National Drug Control Policy (ONDCP). The Chair has reviewed these positions in order to exclude:

1. Positions which are subject to sufficient levels of review to minimize the effect of errors or misconduct;

2. Positions which have minimal impact on the Agency or public; and

3. Positions in which errors are easily corrected and any resulting damage easily repaired.

4. Positions which have been identified by ONDCP in their supplemental guidance as specifically disfavored testing designated positions.

The positions which remained and which have been designated as TDPs are those positions which operate independently, without significant levels of review; which have significant impact on the Agency and the public; in which errors could have significant adverse consequences, which are presumptively included designated positions; and which are preferred testing designated positions. Justification for inclusion in the TDP Pool is outlined below. Following are the positions designated by the Chair as TDPs along with more detailed justification for their inclusion.

Chair (1 position)

The incumbent is a Presidential appointee and the Chief Executive and Administrative Officer of the FLRA. The incumbent is responsible for managing the expenditure of funds appropriated by Congress for the Agency's mission, determining priorities in order to allocate resources among Agency goals and objectives, and developing and implementing Agency policies and programs consistent with congressional intent. The incumbent is also responsible for providing leadership in establishing policies and guidance for the Federal service labor-management relations program including interpreting applicable law and regulations and establishing precedent. The Chair's actions and decisions are of significant interest and importance to the Federal service labor-management community.

Drug usage could result in the serious mismanagement of Federal funds, adversely affect the

integrity and quality of decisions issued by the Authority, and undermine the public's trust and confidence in the fairness and objectivity of the Federal service labor-management relations program. As a Presidential appointee, drug usage by the incumbent could also result in serious embarrassment to the White House.

Authority Members (2 positions in addition to the Chair who is also an Authority Member)

The incumbents are Presidential appointees responsible for providing leadership in establishing policies and guidance for the Federal service labor-management relations program, including interpreting law and regulation and establishing precedent. The Members' actions and decisions are of significant interest and importance to the Federal service labor-management community.

Drug usage could adversely affect the integrity and quality of decisions issued by the Authority and undermine the public's trust and confidence in the fairness and objectivity of the Federal service labor-management relations program. As a Presidential appointee, drug usage by the incumbent could also result in serious embarrassment to the White House.

General Counsel (1 position)

The incumbent is a Presidential appointee responsible for managing a major segment of the Federal service labor-management relations program, including the regional office operations where the FLRA has its most direct contacts with the Federal labor relations community.

Drug usage could adversely affect the integrity and quality of decisions and seriously undermine the public's trust and confidence in the fairness and objectivity of the Federal service labor-management service relations program. As a Presidential appointee, drug usage by the incumbent could also result in serious embarrassment to the White House.

Office of the Inspector General (3 positions)

1. Inspector General
2. Auditor
3. Management Analyst/Auditor or /another professional position

The duties and responsibilities of these positions most appropriately meet the preferred category. These positions have security clearance access. In addition, the Inspector General has contingent firearms capacity. These positions conduct and supervise audits and investigations relating to programs and operations of the Agency.

Drug usage could aversely affect the integrity and quality of the Office of the Inspector General investigations and decisions. Drug usage could also adversely affect the ability of the Inspector General

to prevent and detect fraud and abuse.

Frequency - 25 percent of the positions in this pool will be tested annually, up to twice a year.

FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

INSTRUCTION

FLRA 3700.1B

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

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FEDERAL LABOR RELATIONS AUTHORITY **INSTRUC**

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OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

FLRA 3700.1B

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

CHAPTER I: GENERAL PROVISIONS

A. PURPOSE: This Instruction sets forth the policies and procedures of the Federal Labor Relations Authority (FLRA) to promote and achieve equal opportunity in employment and personnel practices within the FLRA without regard to race, color, religion, sex, national origin, age, or physical or mental disability. In carrying out such purpose, all rights created by statute, regulation, collective bargaining agreement or case law for the exclusive representative of FLRA employees will be followed.

B. CANCELLATION: This cancels FLRA Instruction, FLRA 3700.1A, issued April 11, 1986.

C. SCOPE: This Instruction applies to all employees of the FLRA and those individuals who apply for employment with the FLRA.

D. REFERENCES:

a. Executive Order 11478 of August 8, 1969, as amended;

b. Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e)-16);

c. Public Law 93-112, The Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 791 and 794(a));

d. Public Law 93-259, The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d));

e. Public Law 93-259, Section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 633(a));

f. The Equal Employment Opportunity Commission (EEOC) Federal Sector Complaint Procedures (29 C.F.R. Part 1614); and

g. The EEOC Management Directive, MD-110 (November 9, 1999).

E. POLICY: It is the policy of the FLRA to provide equal employment opportunity (EEO) for all persons; to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability; to promote the full realization of EEO through a continuing affirmative program; and to resolve complaints at the earliest possible stage. This policy is an integral part of every aspect of the FLRA's personnel management program and is intended to help resolve, overcome and/or eliminate problems affecting employment of qualified applicants, the advancement and treatment of employees, and the delivery of program services to the public. While it is also the FLRA's policy to prohibit discrimination in employment because of marital status, sexual orientation or political affiliation, redress for such alleged discrimination must be pursued through existing appeals procedures beyond the scope of this Instruction.

F. RESPONSIBILITY: The responsibility for assuring that equal opportunity is realized within the FLRA rests with every employee. The following sets forth specific responsibilities for designated officials in discharging specific programmatic aspects of the FLRA's EEO program.

1. Chairman. The Chairman of the FLRA has the overall responsibility for the FLRA's EEO program and shall:

a. provide personal leadership in establishing, maintaining and carrying out a continuing affirmative program designed to promote equal opportunity for all employees and all applicants for employment in every aspect of the FLRA's policies and practices;

b. provide sufficient resources to carry out a positive, innovative and continuing EEO program; and

c. annually review the EEO program to ensure that its direction, capability and results are consistent with the stated equal employment opportunity goals of the FLRA.

2. Director, EEO Affirmative Action Program.

The Director of Human Resources is delegated the authority to maintain a continuing affirmative action program to promote equal employment opportunity. FLRA's EEO Affirmative Action Program Director shall report directly to the Chairman and develop and implement affirmative plans that:

1. communicate the Agency's EEO policy and program to all sources of job candidates;

2. work with Agency managers to develop solutions to problems of recruitment, training, employee utilization, and career advancement with other individuals within the FLRA;

3. train managers and supervisors to ensure their understanding and implementation of the EEO affirmative program;

4. collect and maintain accurate employment information on the race, national origin, sex and handicap(s) of its employees to use in studies and analyses which contribute affirmatively to achieving the Agency's EEO objectives; and

5. periodically evaluate the sufficiency and responsiveness of the Agency Affirmative Action Program and report findings and recommendations to the Chairman.

3. Director, Equal Employment Opportunity Complaints (EEO).

The EEO Director is delegated the authority for managing the FLRA's equal employment opportunity complaints programs. The EEO Director shall report directly to the Chairman concerning EEO matters, and shall:

a. develop and implement operating guidelines and instructions for the FLRA's EEO complaints programs;

b. make written materials available to all employees and applicants in every FLRA location concerning all established EEO complaints programs and the administrative and judicial procedures available to them, and post the names and business telephone numbers of all EEO counselors at every FLRA location;

c. develop EEO complaints reports, as required;

d. manage the EEO counseling process, and incorporate alternative dispute resolution (ADR) procedures wherever deemed appropriate, to attempt to resolve matters at the earliest possible stage and to provide a workable process of investigations, dispute resolutions, hearings, as necessary, and final decisions;

e. participate with the EEO Affirmative Action Director and other public

and private sector employees, groups, and organizations in cooperative action to improve employment opportunities for all groups;

f. evaluate periodically the sufficiency and responsiveness of the EEO complaints program and report findings with recommendations to the Chairman;

g. evaluate the effectiveness of the FLRA's non-EEO programs and procedures, including general personnel management, the Selective Placement Program, the Upward Mobility Program, etc., for factors which may impede EEO progress, and propose appropriate corrective measures;

h. participate with the EEO Affirmative Action Director in developing solutions to problems of recruitment, training, employee utilization, and career advancement with other individuals within the FLRA, including the communication of FLRA's EEO complaints policy to all sources of job candidates and solicitation of recruitment assistance from those sources on a continuing basis, and the evaluation and training of managers and supervisors to ensure their understanding and implementation of the EEO complaints policy and program;

i. ensure that the FLRA makes reasonable accommodation to the religious needs of all employees and applicants when such accommodations can be made without undue hardship on the FLRA's business;

j. when authorized by the Chairman, make the final decision on complaints of discrimination, and order such corrective measures as considered necessary; and

k. when not authorized to make the final decision for the Chairman concerning issues on complaints of discrimination, review the record of a complaint before the final decision is made, and make such recommendations to the Chairman, as appropriate.

4. Equal Employment Opportunity Counselors. EEO counselors are selected by the EEO Director. They make informal inquiries and seek solutions to informal complaints. EEO duties and responsibilities are collateral duties which are performed in addition to a counselor's regular duties. EEO counselors shall receive a minimum of 32 hours of appropriate training prior to assuming their counseling responsibilities, and shall receive a minimum of 8 hours of training annually.

5. Equal Employment Opportunity Investigators. EEO investigators, including

contract investigators where appropriate, are selected by the EEO Director and are responsible for timely investigating formal complaints of discrimination submitted by employees or applicants of the FLRA. EEO investigators shall receive a minimum of 32 hours of appropriate training prior to performing EEO complaint investigations, and shall receive a minimum of 8 hours of training annually.

6. Managers and Supervisors. All managers and supervisors are responsible for promoting and implementing the FLRA's EEO program in their organizational units. They shall:

   a. keep informed of all EEO program policies and procedures;

   b. comply with FLRA EEO policy as set forth in this Instruction;

   c. ensure that employees working as collateral-duty EEO Counselors are provided an adequate amount of time to carry out their counseling responsibilities in a timely manner;

   d. provide all employees and applicants equal opportunity within the merit system in employment, development, career advancement, and treatment in their areas of responsibility;

   e. consult with the FLRA Director of Human Resources and/or the EEO Director on personnel management decisions with EEO implications;

   f. provide an atmosphere free from discrimination;

   g. make reasonable accommodation to the religious needs and to the known physical or mental limitations of employees and applicants; and

   h. cooperate with EEO Counselors and/or EEO Investigators in carrying out their EEO responsibilities.

7. Employees. Employees shall:

   a. keep informed of all EEO program policies and procedures which affect their performance on the job;

   b. cooperate with supervisors and managers in carrying out their responsibilities in the EEO Program;

   c. comply with FLRA EEO policy as set forth in this Instruction;

d. provide equal treatment of all individuals with whom they are in contact while in the performance of their official duties; and

e. cooperate with EEO Counselors and/or EEO Investigators in carrying out their EEO responsibilities.

CHAPTER II: DISCRIMINATION COMPLAINT PROCEDURES

A. General Provisions for Processing Complaints.

1. Coverage. This chapter covers individual and class complaints of employment discrimination and retaliation, prohibited by Title VII, as amended, made by employees, former employees, and applicants who believe they have been discriminated against because of race, color, religion, sex, national origin, age, disability, and/or complaints of reprisal, as described below:

   a. Race, Color, Religion, and National Origin. Allegations of discrimination filed by members of minority or majority groups and allegations of failure to accommodate religious needs.

   b. Sex. Allegations of sex discrimination, including sexual harassment and sex-based wage claims, filed by either women or men.

   c. Age. Allegations of age discrimination filed by persons who were at least 40 years of age when the action complained of took place. (See 29 C.F.R. § 1614.201).

   d. Disability. Allegations of discrimination based on physical or mental impairment, including alleged failures to make reasonable accommodations. (See 29 C.F.R. § 1614.203).

   e. Reprisals, Coercion or Intimidation. Allegations of reprisal, coercion, or intimidation made in connection with: (a) opposing employment discrimination; (b) seeking EEO counseling; (c) having filed a complaint of discrimination on grounds of race, color, religion, sex, national origin, physical or mental disability, or age; or (d) having participated in the complaint process. (See Paragraph I below).

2. Effect of Regulations. This Instruction is intended to supplement the procedures found in 29 C.F.R. Part 1614 and in EEOC MD-110. Employees are advised to consult these resources as well as this Instruction. In the event there is a conflict between the provisions of this Instruction and the applicable

regulations, the regulations will govern.

3. Employee Rights. All employees and applicants for employment have a right to file a discrimination complaint. Employees involved in the discrimination complaint process, including complainants, class agents, and witnesses, have the right to use a reasonable amount of official time under the administrative complaint process, and the right to be free from restraint, interference, coercion, discrimination, or reprisal. Individuals will be notified of their rights at each stage of the complaint process. (See Paragraph C).

4. Representatives. At any stage in the preparation and presentation of complaints or administrative appeals from decisions on complaints, complainants have the right to be accompanied, represented, and advised by a representative of their own choosing, including another FLRA employee, provided the choice does not involve a conflict of interest or position (e.g., an EEO counselor cannot also represent employees in processing discrimination complaints), does not conflict with the priority needs of the FLRA, and does not give rise to unreasonable costs to the Government.

   a. FLRA Representative. The FLRA will designate its representative. The FLRA representative may not be an EEO staff member or, in the case of a class complaint, a member of the class.

   b. Complainant or Class Agent's Representative. A complainant or class agent must promptly notify the EEO counselor or EEO Director in writing of the representative's identity. Any changes must also be reported in writing to one of them.

5. Time Extensions. A time limit may be extended if a complainant, agent, or claimant shows that: 1) he/she was not notified and was not otherwise aware of the time limit; 2) he/she did not know or reasonably should not have known that the alleged discriminatory action occurred; 3) circumstances beyond his/her control prevented submission of the matter within the time limit; or 4) for other reasons considered sufficient by the EEO Director. Time limits may also be reasonably extended for other reasons noted in the regulations. (See 29 C.F.R. §§ 1614.105(a)(2), 1614.105(e), 1614.105(f), and 1614.108(e)).

6. Computation of Time. Any time period specified in this chapter will be computed by counting as the first day the day following the event, such as the day after receiving a notice. When the last day falls on a Saturday, Sunday, or Federal holiday, the time period will be extended to include the next business day. (See 29 C.F.R. § 1614.604).

B. Definitions.

1. Individual Complaint. An individual complaint is a written complaint of discrimination filed by an employee, applicant for employment, or former employee alleging that a specific act of discrimination or reprisal has taken place and has adversely affected the individual. (For procedure, see Paragraph C, below).

2. Mixed Case. A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age or disability related to or stemming from an action that is appealable to the Merit Systems Protection Board (MSPB), such as a removal, demotion, suspension for more than 14 calendar days,

   reduction in force, denial of within-grade increase, or furlough for less than 30 calendar days. (See 29 C.F.R. § 1614.302, and procedures at Paragraph D, below).

3. Class Complaint. A class complaint is a written complaint filed on behalf of a class by the agent of the class alleging that an FLRA personnel management policy or practice discriminates against a class and the agent has been personally harmed by the policy or practice. A class complaint is appropriate where: (1) the class is so numerous that a consolidated complaint of the members of the class is impractical; (2) there are questions of fact common to the class; (3) the claims of the agent of the class are typical of those of the class; and (4) the agent or representative of the class will fairly and adequately protect the interests of the class. (See 29 C.F.R. § 1614.204(a)(2)).

   a. Class. A group of FLRA employees, former FLRA employees, and/or applicants for FLRA employment on whose behalf it is alleged that they have been, are being, or may be adversely affected by an FLRA personnel management policy or practice on the basis of their common race, color, religion, sex, national origin, physical or mental disability, and/or age.

   b. Agent. A class member who acts for the class during the processing of the class complaint.

4. An Individual with Disability. An individual who: (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. (See 29 C.F.R. § 1614.203(a)(1)). This term shall not include an individual who is currently engaging in the illegal use of drugs, when the FLRA acts on the basis of such use, but may include an individual who has successfully completed or is currently participating in a supervised rehabilitation program, or is erroneously regarded as engaging in such drug use. (29 C.F.R.

§ 1614.203(h)). This term shall not exclude an individual with a physical or mental impairment caused by the use of alcohol.

5. Physical or Mental Impairment. (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genitourinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (29 C.F.R. § 1614.203(a)(2)).

6. Has a Record of Such an Impairment. Means that an individual has a history of, or has been classified (or misclassified) as having, a mental or physical impairment that substantially limits one or more major life activities. (29 C.F.R. § 1614.203(a)(4)).

7. Is Regarded as Having Such an Impairment. Means that an individual has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or has none of the impairments defined in paragraph B.5. of this section but is treated by an employer as having such an impairment. (29 C.F.R. § 1614.203(a)(5)).

8. Major Life Activities. Functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (29 C.F.R. § 1614.203(a)(3)).

9. Qualified Individual with Disability. With respect to employment, a disabled person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used: (1) meets the experience and/or education requirements (which may include passing a written test) of the position in question; or (2) meets the criteria for appointment under one of the special appointing authorities for disabled persons. (29 C.F.R. § 1614.203(a)(6)).

10. Civil Action. A complaint filed by an employee, class agent, claimant, applicant for employment, or former employee in a Federal district court.

C. Individual Complaint Procedures.

1. Precomplaint Procedures. An individual complainant who believes that he/she has been discriminated against must consult with an EEO counselor before

filing a complaint in order to pursue an informal resolution of the matter. The counselor may not reveal the complainant's identity during the informal counseling process unless so authorized by the complainant. The counselor can be contacted through the EEO Director or by notifying one of the EEO counselors listed in the FLRA telephone directory. The counselor must be contacted within 45 calendar days of the alleged discriminatory action, the effective date of an alleged personnel action, or the date that complainant knew, or reasonably should have known, of the discriminatory action. In an attempt to resolve the issue on an informal basis, the counselor shall advise the complainant, in writing, at the initial counseling session, of his or her rights and responsibilities including:

a. the right to pursue only those matters raised in the precomplaint process in a subsequent complaint;

b. the right to a hearing or an immediate FLRA decision after an investigation;

c. the right to elect among procedures for pursuing allegations of discrimination (see 29 C.F.R. §§1614.106, 1614.201, 1614.301, and 1614.302);

d. the obligation to mitigate damages;

e. the obligation to keep the FLRA and EEOC informed of his or her current address; and

f. the obligation to serve copies of an appeal on the FLRA.

The counselor shall also inform the complainant of administrative and judicial time limits. In addition, the counselor shall advise the complainant that, where the FLRA has deemed ADR appropriate, the complainant may choose either the ADR program or counseling. (See 29 C.F.R. § 1614.105). The FLRA's ADR program is set forth and described in an Addendum to this Instruction.

2. Time Limits. The counselor shall conduct the final interview within 30 calendar days of the date on which the complainant brought the matter to the counselor's attention. The 30-day counseling period may be extended for:

a. up to an additional 60 calendar days if the complainant and the FLRA agree to such an extension in writing; or

b. 90 calendar days if the FLRA and the complainant agree to participate in

an ADR procedure.

If the matter is not resolved to the satisfaction of the complainant, the counselor shall notify the complainant, in writing, of the right to file a complaint of discrimination up to 15 calendar days after complainant's receipt of the notice. The counselor shall also inform the complainant of the appropriate official with whom to file a complaint and of the complainant's duty to promptly inform the FLRA if the complainant retains a representative. (See 29 C.F.R. § 1614.105(d)).

When advised that a complaint has been filed by an aggrieved person, the counselor shall submit a written report within 15 calendar days to the EEO Director and to the aggrieved person concerning the issues discussed and actions taken during counseling.

3. Manner of Filing. A complaint must:

   a. be signed by complainant or complainant's representative, and submitted to the Chairman;

   b. describe the specific FLRA personnel management policy or practice giving rise to the complaint or the action that allegedly harmed the complainant; and

   c. be filed within 15 calendar days of the date of receipt of the notice referred to in section C.2, above. The date of filing is the postmark date rather than when the complaint is received by the designated receiving official.

4. Amendment of Complaints. A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like those raised in the complaint. After requesting a hearing, a complaint may be amended only on motion to the administrative judge. (See 29 C.F.R. § 1614.106(d)).

5. Transfer of Received Complaints. Upon receipt of the complaint, the receiving official shall transmit it to the EEO Director, who shall acknowledge its receipt in accordance with Paragraph C.6 below.

6. Acknowledgment of Complaint. The EEO Director shall acknowledge receipt of a complaint in writing, and shall inform the complainant of the date on which the complaint was filed. Such acknowledgment shall also advise the complainant that:

   a. the complainant has the right to appeal the final decision or dismissal of all, or (subject to Paragraph 7b, below) a portion of, the complaint; and

b. the FLRA is required to conduct a complete and fair investigation of the complaint within 180 calendar days of the filing of the complaint, unless the parties agree in writing to extend the period.

7. Dismissal of a Complaint.

a. Prior to a request for a hearing, the Chairman, or his/her designee, shall dismiss an entire complaint for the reasons set forth in 29 C.F.R. § 1614.107, including where:

(1) the complainant has failed to contact an EEO counselor or has raised a matter that has not been presented to the EEO counselor and is unrelated to issues presented;

(2) the complaint is not timely filed (see 29 C.F.R. § 1614.107 (a)(2));

(3) the complaint lacks specificity and detail;

(4) the complaint involves matters not subject to FLRA control;

(5) the complainant fails to state a claim covered in this chapter (see 29 C.F.R. § 1614.107(a)(1));

(6) the claim is the same as one pending or previously decided by the FLRA or the EEOC (see 29 C.F.R. § 1614.107(a)(1));

(7) the claim relates to an issue that is moot or an action that is in a preliminary stage (see 29 C.F.R. § 1614.107(a)(5));

(8) the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant (see 29 C.F.R. § 1614.107(a)(6));

(9) the complainant has failed to: (a) proceed with the complaint without undue delay; or (b) respond to the FLRA's request to provide relevant information or otherwise proceed with the complaint (see 29 C.F.R. § 1614.107(a) (7));

(10) the complainant has filed a civil action in a Federal district court (see 29 C.F.R. § 1614.107(a)(3));

(11) the complaint alleges dissatisfaction with the processing of a previously filed complaint (see 29 C.F.R. § 1614.107(a)(8)); and/or

(12) the complaint is part of a clear pattern of misuse of the EEO process. A clear pattern of misuse requires evidence of multiple complaint filings and (1) allegations that are similar or identical, lack specificity or involve matters previously resolved; or (2) evidence of circumventing other administrative processes, retaliating against the FLRA's in-house administrative processes or overburdening the EEO complaint system. (See 29 C.F.R. § 1614.107(a)(9)).

If the FLRA determines that the complaint does not meet the requirements of EEOC regulations, the FLRA will give the complainant a written notice of proposed dismissal of the complaint and an opportunity to respond or to provide a specific explanation and/or relevant information in writing within 15 calendar days. If such an explanation or information is not received within the 15 calendar days, the complaint will be dismissed. The FLRA will notify the complainant and his/her representative of its decision to dismiss the complaint. The content of the final decision is discussed in paragraph 10.b, below. Allegations may be withdrawn, in writing, at any time.

b. Where the FLRA determines that some, but not all, of the claims in a complaint should be dismissed, the FLRA shall notify the complainant in writing of its determination, the rationale for that determination, and that those claims will not be investigated. A copy of this notice shall be placed in the investigative file. The determination is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but it is not appealable until final action is taken on the remainder of the complaint.

8. Investigation of Allegations.

a. General. The EEO Director shall provide for an independent, impartial, and prompt investigation of a complaint. An investigation is conducted in accordance with 29 C.F.R. § 1614.108 and shall include a complete and impartial review of:

(1) the circumstances under which the alleged discrimination occurred;

(2) the treatment of members of the complainant's group as compared with the treatment of other employees in the same organization; and

(3) any work-related policies and practices that may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

b. Time Limits. The FLRA will conduct a complete and fair investigation within 180 calendar days of the filing date of the complaint (29 C.F.R. § 1614.108(e)) or, where the complaint has been amended, within the earlier of 180 days after the last amendment of the complaint or 360 days after the original complaint was filed (29 C.F.R. § 1614.108(f)), unless otherwise directed when an appeal from dismissal is involved. An extension of time is authorized for not more than:

(1) 90 calendar days if the complainant and FLRA agree in writing; and/or

(2) 30 calendar days if the complaint file must be sanitized.

c. Authority of the Investigator. An investigator is authorized to:

(1) investigate all aspects of the complaint;

(2) require all FLRA employees to cooperate in the conduct of investigations;

(3) obtain sworn statements from FLRA employees who have knowledge of the events surrounding the complaint;

(4) obtain certified copies of relevant documents and information about a person's membership or nonmembership in a complainant's group; and/or

(5) where appropriate, when a party fails to provide requested information: (i) draw an adverse inference against the uncooperative party; (ii) establish the matter to which the requested information relates in favor of the opposing party; (iii) exclude other evidence submitted by the uncooperative party; (iv) issue, in whole or in part, a decision in favor of the party opposing the uncooperative party; or (v) take other appropriate action. (See 29 C.F.R. § 1614.108(c)(3)).

d. Report of Investigation. A report of investigation will contain relevant documents and information, including affidavits or other sworn statements acquired during the investigation. A copy of the report of investigation will be furnished to the complainant or complainant's representative with a notice of complainant's right to an EEOC hearing or an immediate final FLRA decision without a hearing. Complainant must notify the EEO Director in writing of his/her choice within 30 calendar days of receiving the investigation file. If complainant does not

notify the FLRA within the 30-day period, the final FLRA decision may be issued.

9. Hearings. A hearing will be conducted when requested by the complainant, in writing, within the time limits specified in 29 C.F.R. § 1614.108(f). When a complainant requests a hearing, the FLRA shall request the EEOC to appoint an administrative judge to conduct the hearing. Procedures for the hearing can be found at 29 C.F.R. § 1614.109 and EEOC MD-110, Chap. 7. Where there is no issue of material facts, findings and conclusions may be issued without a hearing or other appropriate action may be taken. (29 C.F.R. § 1614.109(g)). Absent good cause, the administrative judge will issue a decision, and, where discrimination is found, order appropriate relief, within 180 calendar days of receipt by the administrative judge of the complaint file.

10. Offer of Resolution (see 29 C.F.R. § 1614.109(c)).

a. The FLRA may make an offer of resolution:

(1) to a complainant represented by an attorney, at any time after the filing of a formal complaint until 30 calendar days prior to a hearing, or

(2) to a complainant not represented by an attorney, at any time after the appointment of an administrative judge, but not later than 30 calendar days prior to the hearing.

b. An offer of resolution must be in writing and provide:

(1) an explanation of the possible consequences of failing to accept the offer;

(2) attorney's fees and costs, as of the date of the offer;

(3) any specific non-monetary relief; and

(4) any monetary relief, which may be offered as a lump sum, or may be itemized as to amounts and types.

c. The complainant shall have 30 calendar days from receipt of the offer to accept it. If the complainant does not accept the offer and the relief ultimately awarded, whether by an administrative judge, the FLRA, or the EEOC, is not more than the offer, the complainant may not recover attorney's fees or costs incurred after the end of the 30-day acceptance period. However, the EEOC may, in unusual circumstances, find that equitable considerations make it unjust to withhold such attorney's fees

and costs.

d. An acceptance of an offer of resolution must be in writing and be postmarked or received by the FLRA within the 30-day period.

11. Final Action by the FLRA. The Chairman, or his/her designee, shall take the following final FLRA action on complaints based on information in the complaint file.

a. Where an administrative judge has issued a decision, the FLRA shall issue a final order within 40 calendar days of receipt of the administrative judge's decision.

(1) The final order shall notify the complainant whether or not the FLRA will implement the decision and order of the administrative judge, and must inform the complainant of the right of appeal, the right to file a civil action, applicable time limits, the name and address of the EEOC official with whom to file an appeal, and the name of the proper defendant in a civil action. A copy of the EEOC Form 573, Notice of Appeal/Petition, shall be attached. (See Paragraphs P and Q below);

(2) If the final order does not fully implement the administrative judge's decision and order, the FLRA shall simultaneously file an appeal with the EEOC and append a copy of the appeal to the final order.

(3) If the FLRA fails to issue a final order within the 40-day period, the decision of the administrative judge becomes the final action of the FLRA.

b. When the FLRA dismisses a complaint in its entirety, receives a request for a final decision or does not receive a response to the notice referenced in paragraph C.8.d, above, it shall issue a final decision. The final decision shall include:

(1) findings on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint;

(2) when there is a finding of discrimination, appropriate remedies and relief in accordance with 29 C.F.R. § 1614.501; and

(3) when there is a finding of discrimination, the complainant and complainant's representative will be notified that in order to request attorney's fees or costs, a verified statement of costs and fees accompanied by an affidavit, executed by the attorney, must be submitted to the FLRA within 30 calendar days of receipt of the final decision. (See Paragraph O below).

c. Time Limits. The Chairman, or his/her designee, shall issue a final decision within 60 calendar days after:

(1) receiving a request for an immediate final FLRA decision;

(2) the 30-day period for requesting a hearing or an immediate final FLRA decision has expired, and the complainant has requested neither a hearing nor a final FLRA decision.

d. Transmittal of Decision. The final decision shall be transmitted to the complainant and complainant's representative by a method that will show the date of issuance and receipt.

D. Mixed Cases.

1. Choice of Procedures. Where a personnel action is appealable to the MSPB, an employee may appeal to the MSPB or file a discrimination complaint, but not both. The choice is made when a timely appeal is filed with MSPB or a formal complaint of discrimination is filed with the FLRA. (See 29 C.F.R. § 1614.302).

2. Mixed Case Appeals. When an individual elects to file a mixed case appeal with MSPB, the matter is processed pursuant to MSPB procedures. (See 5 C.F.R. § 1201).

3. Mixed Case Complaints. When an individual elects to file a formal discrimination complaint with the FLRA, it is processed pursuant to paragraph C above, with the following exceptions:

a. a complainant's appeal from a final FLRA decision and request for a hearing is made to MSPB, not EEOC;

b. a final FLRA decision shall be made within 45 calendar days after completion of the investigation without a hearing; or

c. if a final FLRA decision is not issued within 120 calendar days from the filing of a formal complaint, an employee may appeal to MSPB at any

time thereafter as specified at 5 C.F.R.§ 1201.154((b)(2), or may file a civil action as specified at 29 C.F.R.§ 1614.310(g), but not both.

4. Dismissal of Mixed Case Complaints. Mixed case complaints shall be dismissed for the reasons specified in paragraph C.7 above, and additionally shall be dismissed if the complainant has made a prior election of the MSPB procedures. (29 C.F.R.§ 1614.302(c)(2)).

5. Petition for Review of Final MSPB Decisions Involving Allegations of Discrimination. An individual who has been before the MSPB with a matter involving allegations of discrimination and has received a final MSPB decision may petition EEOC to consider the MSPB decision on the discrimination issues within 30 calendar days after receipt of notice of the final MSPB decision, or within 30 calendar days after the decision of an MSPB field office becomes final. (See 29 C.F.R. § 1614.303).

6. Review Procedures. The procedures governing petitions for review of final MSPB decisions are set forth in 29 C.F.R. § 1614.303-305.

E. Grievance Procedures. Neither the current collective bargaining agreement covering FLRA employees nor the FLRA administrative grievance procedure (FLRA Instruction 3820.1) currently permits the filing of grievances over matters covered by this Instruction.

F. Age Discrimination Complaint Procedures.

1. Administrative Complaint. An individual within the protected age group may choose to use either the EEO complaint procedure or mixed case procedures, as applicable to the circumstances of the case.

2. Civil Action. As an alternative to filing a complaint, an aggrieved individual may bypass the administrative complaint process and file a civil action directly in an appropriate United States district court. (See Paragraph Q.3.c and 29 C.F.R.§ 1614.201(a)).

G. Class Complaint Procedures (see 29 C.F.R. § 1614.204).

1. Precomplaint Procedures. Paragraph C.1 above applies to class complaints, with the following exceptions:

a. an employee or applicant who wishes to pursue a class complaint will be the agent of the class (hereinafter referred to as "agent"); and

b. the counselor shall explain class complaint procedures and the agent's responsibilities.

2. Manner of Filing. Paragraph C.3 above applies to class complaints, with the following exceptions:

   a. the term "agent" is substituted for complainant; and

   b. the complaint must describe the policy or practice adversely affecting both the class and agent.

3. Acceptance or Dismissal of a Complaint.

   a. Within 30 calendar days of the FLRA's receipt of a complaint, the EEO Director will forward the complaint, a copy of the EEO counselor's report, relevant information, and FLRA recommendations to the EEOC. The EEOC will assign the complaint to an administrative judge. The administrative judge may dismiss the complaint for any of the reasons found in paragraph C.7, above, or because the complaint does not meet the prerequisites of a class complaint.

   b. The administrative judge will transmit the decision to accept or dismiss the class complaint to the FLRA and the agent. The FLRA must issue its final order within 40 calendar days of receipt of the administrative judge's decision.

      (1) The final order shall notify the agent whether or not the FLRA will implement the decision and order of the administrative judge, and must inform the agent of the right of appeal, the right to file a civil action, applicable time limits, the name and address of the EEOC official with whom to file an appeal, and the name of the proper defendant in a civil action. A copy of the EEOC Form 573, Notice of Appeal/Petition, shall be attached. (See Paragraphs P and Q below).

      (2) If the final order does not fully implement the administrative judge's decision and order, the FLRA shall simultaneously file an appeal with the EEOC and append a copy of the appeal to the final order.

      (3) If the FLRA fails to issue a final order within the 40-day period, the decision of the administrative judge becomes the final action of the FLRA.

      (4) A dismissal of a class complaint shall inform the agent either that the complaint is being accepted as of that date as an individual complaint to be processed under paragraph C, above, or that the complaint is also being dismissed as an individual complaint.

c. Within 15 calendar days of receiving notice that the administrative judge has accepted a class complaint (or a reasonable time set by the administrative judge), the FLRA shall, by reasonable means, notify all class members of the acceptance of a class complaint.

4. Obtaining Evidence.

a. Once the class complaint is accepted, the agent or the agent's representative and the FLRA representative shall be given a period of at least 60 calendar days to prepare their cases and develop evidence through accepted discovery techniques. The time for developing evidence may be extended, upon the request of either party, by the administrative judge.

b. If cooperative efforts fail, either party may request a ruling from the administrative judge on a request to develop evidence. A party's failure to comply with such a ruling without good cause may result in the administrative judge's action(s) set forth at 29 C.F.R. § 1614.204(f).

c. During the period for development of evidence, the administrative judge may direct that an investigation of facts relevant to the complaint be conducted by an agency certified by the EEOC, and that a copy of that investigative file be given to the representatives of each party.

5. Opportunity for Resolution. After the evidence is developed, the administrative judge shall furnish the agent or the agent's representative and the FLRA representative a copy of all pertinent documents and provide opportunities for discussion and resolution. Any resolution will be reduced to writing, signed by the agent and/or class representative, and the FLRA's representative. The complaint may be resolved at any time pursuant to the notice and approval provisions set forth below.

a. Notice. If a resolution is proposed, notice must be given to all members of the class. The notice must include a copy of the proposed resolution, set out the relief, if any, the FLRA will grant, and inform the class members that the resolution will bind all class members. The notice must also inform the members of the right to object to the resolution to the administrative judge within 30 days of receipt of the notice.

b. Approval. The FLRA will provide the administrative judge with the proposed resolution and the notice sent to the class members. If the administrative judge determines that the resolution is not fair, adequate and reasonable, the agreement between the class agent and the FLRA will be vacated. The class agent, class members and the FLRA may appeal the determination to the EEOC. If the administrative judge

determines that the resolution is fair, adequate and reasonable, the resolution becomes binding. Any class member who filed objections to the proposed resolution may appeal the administrative judge's decision.

6. Hearings. A hearing shall be conducted in accordance with 29 C.F.R. § 1614.109 (a)-(f).

7. Findings and Recommended Decision. The EEOC will send the hearing record, analysis and findings, and recommended decision on the complaint to the FLRA Chairman, or his/her designee, and will notify the agent of the date on which this was done.

8. Final FLRA Decision. Within 60 calendar days of receipt of the administrative judge's findings and recommendations, the FLRA must issue a decision to accept, reject, or modify those findings and recommendations. If the FLRA does not issue a decision within 60 calendar days, the administrative judge's findings and recommendations become the decision of the FLRA. The decision shall be served on the class agent within 5 calendar days of the expiration of the 60-day period.

   a. If the final FLRA decision dismisses the class element of the complaint, the allegations of individual discrimination shall be processed under paragraph C above.

   b. A final decision finding discrimination is binding on the class. A finding of no discrimination is not binding on a class member's individual complaint.

   c. The FLRA shall notify class members of the final FLRA decision and the relief awarded, if any, through the same medium used to give notice of the existence of the class complaint and within 10 calendar days of transmittal of the decision to the agent.

H. Complaints Based on Physical or Mental Disability.

_____1. The FLRA shall make reasonable accommodation to the known physical or mental limitations of a qualified disabled applicant or employee unless the FLRA can demonstrate that the accommodation would impose an undue hardship on the operation of its program. (See 29 C.F.R. § 1614.203(c)).

2. Reasonable accommodation may include, but shall not be limited to: (1) making facilities readily accessible to and usable by disabled persons; and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of

examinations, the provision of readers and interpreters, or other similar actions.

3. In determining whether an accommodation would impose an undue hardship on the operation of the FLRA, factors to be considered include: (1) the overall size of the FLRA's program with respect to the number of employees, number and type of facilities and budget; (2) type of FLRA operation, including the composition and structure of the FLRA's work force; and (3) the nature and cost of the accommodation.

4. The FLRA is required to consider reassignment whenever a nonprobationary employee with a disability can no longer perform his/her duties, and must reassign such an employee when the circumstances described in 29 C.F.R. § 1614.203(g) are met. The undue hardship concept applies to reassignments, just as it does to reasonable accommodations.

I. Complaints of Reprisal.

1. Manner of Filing. Any employee who believes he/she has suffered restraint, interference, coercion, discrimination, or reprisal based on his/her: (1) opposition to discriminatory FLRA policies or practices; and/or (2) participation in a discrimination complaint procedure, may file formal charges of reprisal. Allegations of reprisal may be processed as an individual complaint of discrimination, or as a mixed case if related to an FLRA action which is appealable to MSPB. (See Paragraphs C, D, and E above).

2. Allegations at Hearing Stage. If a complainant alleges restraint, interference, coercion, discrimination, or reprisal, during the hearing stage, the EEOC may consolidate the allegations with any pending complaint.

J. Complaints Against the FLRA Chairman, the EEO Director or an EEO Counselor.

1. Chairman. When the FLRA Chairman is named in an individual capacity in a complaint of discrimination, a designee named by the Chairman will take any action that is otherwise the primary responsibility of the Chairman.

2. EEO Director or EEO Counselor. The EEO Director and EEO counselors shall not participate in the complaint process if named in any capacity in a complaint of discrimination. The EEO Director shall notify the FLRA Chairman of his/her disqualification and shall refer the complaint file to the Chairman. The Chairman shall designate a person to receive and process the complaint.

K. Compliance with Settlement Agreements.

1. When a complainant believes that the FLRA has failed to comply with the terms of a settlement agreement, he/she must notify the EEO Director in writing, within 30 calendar days of when he/she knew or should have known of the alleged noncompliance. (See 29 C.F.R. § 1614.504 and Paragraph O.4, below). The complainant may request that the agreement be specifically implemented or that the complaint be reinstated.

2. The FLRA shall respond to the complainant in writing. If the FLRA fails to respond or the complainant is dissatisfied with the response, the complainant may appeal to the EEOC in accordance with 29 C.F.R. § 1614.504. The complainant may file an appeal 35 calendar days after serving the EEO Director with the allegations of noncompliance, but must file an appeal within 30 days of the FLRA's response.

L. Complaints Alleging Violation of the Equal Pay Act.

1. Complaints alleging violation of the Equal Pay Act may be filed as an individual or class complaint. (See Paragraphs C and G above, 29 C.F.R. § 1614.202, and C.F.R.§ 1614.409).

2. In its enforcement of the Equal Pay Act, the EEOC has the authority to investigate the FLRA's employment practices on its own initiative at any time in order to determine compliance with the provisions of the Act. The EEOC will provide notice to the FLRA when it will be initiating an investigation.

M. Consolidation and Joint Processing of Complaints (see 29 C.F.R. § 1614.606).

1. Complaints filed by different persons relating to the same or similar issues may, after appropriate notice to the parties, be consolidated for joint processing.

2. Two or more complaints of discrimination filed by the same individual shall be consolidated after appropriate notice to the complainant. There is one investigation, one attempted informal adjustment, one proposed disposition, and one hearing when complaints have been joined for processing.

N. Attorney's Fees and Costs (29 C.F.R. § 1614.501(e)). The FLRA is authorized to award reasonable attorney's fees or costs incurred in the processing of an administrative complaint when there is a finding of discrimination or reprisal, as follows:

1. attorney's fees may be awarded for services performed after the filing of the complaint and after the complainant has notified FLRA that (s)he is represented; and

2. attorney's fees may be awarded only to members of the bar and law clerks, paralegals, or law students under the supervision of members of the bar. No fees may be awarded, however, for the services of any employee of the Federal government.

The amount of the attorney's fees and costs is determined under 29 C.F.R. § 1614.501(e). If the FLRA determines not to award attorney's fees or costs to a prevailing complainant, the FLRA will give specific reasons for denying the award. Attorney's fee awards may be appealed to the EEOC. (See Paragraph O, below).

O. Appeals to the Equal Employment Opportunity Commission.

1. Procedures. The procedures governing appeals on individual and class complaints and grievances (if applicable) are found at 29 C.F.R. § 1614.401-406. A written appeal must be submitted by mail, personal delivery or facsimile ((202) 663-7022) to the Director, Office of Federal Operations, EEOC, P. O. Box 19848, Washington, D.C. 20036. The complainant should use EEOC Form 573, Notice of Appeal/Petition, and describe the FLRA decision giving rise to the appeal. (See 29 C.F.R. § 1614.403(a)).

2. Appealable Matters. Appealable matters include:

   a. dismissal of an entire complaint;

   b. the final FLRA decision on the merits and/or partial dismissal of the complaint;

   c. the award of attorney's fees or costs; and

   d. failure to comply with the terms of a settlement agreement. (See 29 C.F.R. § 1614.504).

3. Nonappealable Decisions. A complainant may not appeal to the EEOC when: (i) the FLRA dismisses some but not all claims in a complaint; (ii) a determination has not been made on all issues in the complaint; (iii) the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the EEOC; (iv) a final FLRA decision has been issued on the merits of the mixed case complaint; or (v) an FLRA decision rejects or cancels a mixed case complaint, unless a misapplication of procedures is alleged.

4. Time Limits.

   a. FLRA Decisions. A complainant may appeal any matters outlined in paragraph O.2. to the EEOC within 30 calendar days of receiving the

dismissal or final decision. If there is an attorney of record, the 30-day period will run from the day the attorney received the dismissal or final FLRA decision. Time limits may be extended, at the discretion of the EEOC Office of Federal Operations, upon a showing that complainant was not notified of the time limit and was not otherwise aware of it, or that circumstances beyond his/her control prevented the filing of an appeal within the time limit.

b. Noncompliance Complaint. If the FLRA fails to respond, in writing, within 30 calendar days of receipt of allegations of noncompliance, or if complainant is not satisfied with the FLRA attempt to resolve the allegations, the complainant may appeal to EEOC. A complainant may file an appeal 35 calendar days after the service of the allegations of noncompliance, but must file within 30 calendar days after receiving the final FLRA decision.

5. Briefs. Any statement or brief in support of the appeal must be submitted to EEOC and FLRA representatives within 30 calendar days of filing the notice of appeal.

P. Civil Actions (see 29 C.F.R. §§1614.407-409).

1. Statutory Rights. The FLRA will notify complainants, agents, and claimants, of the right to file civil actions and the applicable time frames.

2. Proper Defendant. When a civil action is filed, the FLRA Chairman is the appropriate official to be named as defendant in captioning the complaint.

3. Time Limits.

a. Individual and Class Complaints and Claims. A complainant or class agent may file a civil action alleging Title VII, Age Discrimination in Employment Act, or Rehabilitation Act violations in an appropriate Federal district court: (a) within 90 calendar days of receiving notice of the final FLRA decision on a complaint or claim where no appeal has been filed; (b) after 180 calendar days of filing a complaint or claim with the FLRA, if there has been no decision on the complaint or claim; (c) within 90 calendar days of receiving the final EEOC decision on an appeal; or (d) after 180 calendar days of filing an appeal with the EEOC, if there has been no final EEOC decision. (See 20 C.F.R.§ 1614.407).

A complainant or class agent may file a civil action alleging violation of the Equal Pay Act in an appropriate Federal district court within two (2) years or, if the violation is willful, within three (3) years of the alleged

violation. (See 29 C.F.R § 1614.409).

b. Mixed Case Complaints. A mixed case complainant may file a civil action in an appropriate Federal district court within 30 calendar days of receiving: (a) the final FLRA decision, unless an appeal is filed with MSPB; (b) the MSPB decision, unless a petition for consideration is filed with EEOC; (c) the EEOC decision not to consider the MSPB decision; (d) EEOC's concurrence with the MSPB decision; (e) the MSPB's concurrence and adoption of the EEOC decision, if the EEOC differs from the MSPB decision; and (f) the Special Panel decision, if MSPB disagrees with the EEOC decision and reaffirms its initial decision with or without revisions. A civil action may also be filed: (a) after 120 calendar days of filing a complaint with the FLRA if there has been no final FLRA decision on the complaint; (b) after 120 calendar days of filing an appeal with MSPB if there has been no decision on the appeal; or (c) after 180 calendar days of filing a petition for consideration with EEOC if there is no decision by the Commission, reconsideration decision by the MSPB, or decision by the Special Panel. (See Paragraph D above, 29 C.F.R.§ 1614.310).

c. Age Complaints. A complainant or agent may serve the EEOC with a notice of intent to file a civil action, and after 30 calendar days, may file a civil action in an appropriate Federal district court. The notice of intent must be filed within 180 calendar days after the alleged discriminatory act occurred. (See 29 C.F.R. § 1614.201).

Q. Confidentiality.

1. Precomplaint Process. The identity of an aggrieved person will be maintained on a confidential basis in the precomplaint process unless the person authorizes the counselor to reveal the person's identity.

2. Postcomplaint Process

a. The complainant, the complainant's representative, and the FLRA representative will be provided copies of the complaint file, including the investigative report.

b. Information and documents may also be disclosed to a witness who is a federal employee where the investigator determines that the disclosure of the information is necessary to obtain further information from the witness (see MD-110, Chap. 6, § VIII.A.).

R. Use of Official Time and Resources.

1. Official Time and Resources. FLRA employees involved in the complaint process, such as complainants, agents, witnesses, and representatives, have the right to use a reasonable amount of official duty time and FLRA resources, including library research, copy machines and office supplies, as needed, to prepare a complaint under this chapter.

2. Reasonable refers to the time necessary to allow a complete presentation of information associated with the complaint. The time will vary depending on the nature and complexity of the complaint and the FLRA's need to have its employees available to perform their normal duties on a regular basis.

3. Official duty time refers to time used during working hours without charge to leave or loss of pay.

4. Employees who do not request anonymity during precomplaint procedures or who file a formal complaint must get advance approval from their immediate supervisors to use official time prior to meeting with EEO personnel.

5. Employees who request anonymity during precomplaint procedures must use annual leave or schedule meetings with EEO personnel before or after regular office hours or during scheduled lunch periods.

This Instruction is effective June 27, 2001.

Solly Thomas
Executive Director

Alternative Dispute Resolution for EEO Disputes
Federal Labor Relations Authority

The FLRA's ADR program provides an alternative to the informal counseling process and an option during the formal complaint process, currently provided for in the EEOC's regulations codified in 29 C.F.R. Part 1614. Additionally, it will complement the formal complaint process. This ADR program supersedes all other existing EEO-related ADR programs at the FLRA.

I. INTRODUCTION

This ADR program will be administered in a manner which is consistent with the core principles as outlined in the EEOC's Management Directive (MD-110), including fairness, flexibility, and an emphasis on training and evaluation.

The FLRA's ADR program is mediation, and is available as an alternative to informal EEO counseling, or during the formal complaint process, for aggrieved persons who believe they have been discriminated against based on race, color, sex (including sexual harassment), age, religion, national origin, disability (mental and/or physical), and reprisal, coercion or intimidation as referenced in the FLRA's EEO instruction (to which this ADR program is attached).

The ADR program is designed to settle disputes without litigation or administrative adjudication. ADR is intended to address individual disputes within a reasonable period at the informal stage of the EEO process by using trained mediators to facilitate resolution. If ADR is chosen during the informal counseling stage, the initial thirty (30) day informal period is extended to 90 calendar days. This replaces the informal counseling process. The second opportunity for ADR is during the formal complaint process. A formal complaint must be timely filed, and if ADR is requested during that stage of the process, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved, the complaint must be processed within the extended time period.

The aggrieved person may request ADR, or its use may be recommended by a management official or an EEO counselor.

Participation in the ADR program by the aggrieved person is strictly voluntary. However, when the aggrieved person elects to participate in the ADR program, appropriate management officials are required to participate in this program as well. Management will abide by the procedural requirements of the ADR program. The agency will designate management officials who have the authority to enter into a settlement agreement. This official with settlement authority will not be the official directly involved in the case. As explained below, the aggrieved person and FLRA management are entitled to be represented throughout the ADR process.

Due to the voluntary nature of this process, any participant can terminate ADR after sessions have begun. Participants should realize that this is an alternative process, and therefore all EEO processes are still available if ADR is not successful.

II. DIFFERENCES BETWEEN INFORMAL COUNSELING AND MEDIATION

A. EEO Counseling

During the informal counseling period, an EEO counselor works with the aggrieved person and management to gather information on the matter and attempts to resolve the dispute. If the matter is not resolved during this period, the EEO counselor writes a counseling report that documents the alleged discrimination and any attempts at settlement. The counseling report must detail the issue(s), basis of discrimination claimed, and address any other jurisdictional questions. The counseling report is subsequently used in the processing of the formal complaint to determine the scope of the complaint. Counselors are trained to gather information (interview witnesses and gather records and documents) about the matter in order to effectively write the counseling report. The EEO counselor generally focuses on gathering information from each individual separately. Informal resolution efforts by the counselor are usually pursued by circulating information and resolution proposals between the parties rather than directly holding joint discussions.

B. ADR

ADR involves alternatives to formally established processes, usually litigation, for resolving disputes. In the context of EEO processes, ADR generally provides an alternative to the traditional informal EEO counseling and/or formal complaint processes. ADR usually involves a third-party neutral such as a mediator or facilitator working with the parties in dispute to facilitate communication and assist them in working toward a resolution of their dispute. Generally, the third-party neutral is a process expert, skilled in a particular type of ADR.

The FLRA's ADR program involving the use of mediation is available for all cases at any time during the EEO process. However, the objective is to seek informal resolution of alleged employment discrimination through FLRA's EEO process at the earliest possible time while not infringing upon the rights guaranteed under 29 C.F.R. Part 1614.

Mediators are neutral third parties whose focus is to facilitate communication and problem solving by the individual disputants. Mediators work to identify common ground between the parties and help them develop options for resolving their dispute. The mediator is someone from outside the disputants' office/organization who has no interest in the matter. The mediator meets with the disputing parties and their representative (s) (if any) jointly to discuss the issues and ways of possibly resolving the dispute.

The mediator may meet separately with the parties to further discuss the issues and explore possible settlement options privately. The mediator may carry settlement offers between the parties. Mediators do not evaluate the merits of the matters in dispute or the fate of the potential case if the matter is not resolved through mediation and is pursued through the formal complaint process and litigation in the courts. However, the mediator may provide information about the resolution of similar disputes. The parties retain complete control over the outcome. The parties decide whether or not to continue with mediation, whether or not to resolve the matter through a settlement agreement, and how to fashion the terms of their agreement. Mediation is a confidential process, as more fully discussed in part IV., below. The mediator does not keep records or write reports or otherwise disclose anything about the mediation proceedings. Since they have no role in documenting the matter, mediators do not engage in fact-finding activities. If the mediation does not result in a resolution of the matter during the informal stage, the EEO Counselor will be informed only that mediation has not resolved the dispute. Thereafter, the aggrieved person will receive written notice from the EEO counselor that if he/she wishes to go forward with the dispute, a formal complaint must be filed with the EEO Director. The mediator will play no role in advancing the EEO process. Mediation may continue, however, into the formal stage of the complaint process so long as a formal written complaint has been timely filed.

III. WHO IS COVERED BY THE ADR PROGRAM

This ADR program covers EEO disputes initiated by all current employees, former employees concerning matters arising during their employment, and applicants for FLRA employment. Coverage extends to both bargaining and non-bargaining unit employees who present issues that are covered under the applicable statutes and EEOC regulations. Also, the program covers aggrieved persons who are currently involved in the pre-complaint counseling stage. However, for the latter instances, the pre-complaint process cannot extend the period for filing a formal EEO complaint beyond the 90 day period (discussed during the introduction of this program) provided in 29 C.F.R. Part 1614 for informal counseling. Even if the aggrieved person files a formal complaint, any informally initiated ADR process may continue, if all parties agree.

IV. CONFIDENTIALITY

In general, a mediator is prohibited from disclosing any dispute resolution communication or any communication provided to the mediator in confidence, including personnel data such as performance evaluations. A dispute resolution communication is any oral or written communication prepared for purposes of a proceeding under this program, except any written agreement to mediate or any final written agreement reached as a result of this program. Unless the communication falls within one of the exceptions discussed below, the mediator cannot voluntarily disclose the communication and cannot be forced to disclose the communication through a discovery request or other compulsory process.

A mediator may disclose a communication if all parties and the mediator agree in writing to the disclosure. A mediator may disclose a communication if the communication already has been made public. A mediator may disclose a communication if there is a statute that requires the communication to be made public. A mediator may disclose a communication if so ordered by a court. Courts may order disclosure upon finding that the mediator's testimony or the disclosure is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health and safety. Courts may require disclosure upon determining that the need for disclosure outweighs the detrimental impact on the integrity of dispute resolution proceedings in general.

The EEO Director or his/her designee will assure that all aggrieved parties and mediators are familiar with these confidentiality provisions.

V. PROCEDURES

The procedures for electing either mediation or the traditional EEO counseling process are outlined below. These procedures also apply where mediation is elected after a formal written EEO complaint has been filed.

A. As set forth in the EEO Instruction, when an aggrieved person timely contacts an EEO Counselor alleging specific grounds for believing that unlawful discrimination has occurred, the EEO Counselor will inform the aggrieved person of the ADR option and provide him/her with a copy of the ADR program. If deemed necessary, the aggrieved person may contact the EEO Director for further explanations concerning how ADR works generally.

B. The EEO Counselor will also advise the aggrieved person of his or her rights and responsibilities in the EEO process, as set forth in 29 C.F.R. § 1614.105(b).

C. The initial contact with the EEO Counselor will start the time limits provided in EEOC's regulations for informal counseling. If the person elects to use ADR instead of counseling, the 30 day informal counseling period shall be extended to 90 days.

D. If the aggrieved person chooses to use ADR, he or she must fill out the ADR Request Form(Form A).

E. The EEO Counselor will contact the EEO Director for assistance in obtaining names of mediators) within 5 working days of the notification that ADR has been chosen by the aggrieved person. Mediators must be mutually agreeable to the aggrieved person and the appropriate management official(s). Mediators will come from the following sources: (1) the Federal Sharing Neutrals Program, and (2) the private sector. All mediators must meet minimum training and qualification requirements as defined in the EEOC Management Directive.

F. In addition to notifying the EEO Director of the selection, if the aggrieved person is a bargaining unit employee or an applicant for a bargaining unit position, the EEO counselor will send notice to the UAE President and the appropriate management official for that component. This is a notification to the UAE of any potential discussions which could affect the working conditions of bargaining unit employees. The notice will indicate whether the aggrieved person is a current or former FLRA employee, or an applicant for employment in a unit position, but will not identify the aggrieved person by name.

G. The EEO Director will coordinate the mediation effort, having primary responsibility for logistical arrangements. The EEO Director is responsible for the overall management of the ADR program. He or she develops and maintains trained staff to implement the ADR program and ensures that the ADR program is in compliance with applicable EEOC and OPM regulations. The EEO Director arranges for mediators and manages, implements and evaluates the ADR process.

H. The mediation process will commence by the mediator contacting the aggrieved person (and representative, if any) and the appropriate management official to schedule the mediation session. When the parties to the dispute convene, they will sign an Agreement to Mediate (Form B). By signing the agreement, the parties indicate that they understand the mediation process and the conditions and procedures of participation. After electing to participate in the mediation process, the aggrieved person may opt out of the process at any time.

I. The UAE will be given notice and an opportunity to attend any mediation session involving an EEO dispute where, consistent with FLRA precedent, such session constitutes a formal discussion between one or more representatives of the FLRA and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment. The UAE representative's participation ordinarily will be minimal, as the role of such representative is to monitor potential effects on the working conditions of the aggrieved person and bargaining unit employees.

J. If mediation successfully resolves the EEO dispute, the parties will execute a Mediation Agreement describing the resolution of the dispute (Form C). The mediator will notify the EEO counselor that the dispute has been resolved so that the counselor can close the case. An aggrieved person cannot file an EEO complaint concerning anything said or done during attempts to resolve the dispute through ADR, including the agency's failure to provide a neutral. Allegations by an aggrieved person that the FLRA has not complied with the terms of the Mediation Agreement shall be handled in accordance with 29 C.F.R. § 1614.504, beginning with the aggrieved person's notice to the EEO Director, in writing, of the alleged non-compliance within 30 days.

K. If mediation in the informal stage is unsuccessful, the mediator will report the outcome (without specifics) to the EEO Director and will indicate on the Mediator Reporting Form (Form D) that no resolution was reached. The EEO Director will then contact the EEO Counselor of record and ask him/her to prepare the Notice of Final Interview/Right to File a Formal Discrimination Complaint and the EEO Counselor's Report as referred to in the FLRA EEO Instruction. The latter Report will specify the aggrieved person's alleged grounds of discrimination, and will reflect that the aggrieved person was offered and accepted ADR in lieu of counseling but that such efforts at informal resolution were unsuccessful.

L. The EEO Counselor will provide the aggrieved person with two copies of the Counselor's report, the Notice of Final Interview, the Notice of Right to File a Formal Discrimination Complaint and the Complaint Form. The EEO counselor will advise the aggrieved person that if he or she elects to file a complaint of discrimination on any of the grounds previously raised, it must be filed within 15 calendar days of receipt of the Notice of Right to File a Discrimination Complaint.

M. If the aggrieved person has opted for EEO counseling rather than ADR mediation during the informal stage of the EEO process, he or she still may choose to invoke mediation after a formal written EEO complaint has been timely filed (see paragraph L) by so notifying the EEO Director in writing. The same procedures governing ADR at the informal stage also apply after a formal EEO complaint has been filed, except that if mediation is successful, the EEO Director upon being so notified will take the necessary steps to close the case by advising the EEO investigator, the EEOC, and/or the FLRA representative responsible for preparing a final agency determination, as appropriate. If mediation of the formal complaint is unsuccessful, the complaint must be processed within the applicable time period as extended by the 90 days during which ADR procedures were in effect.

VI. IMPLEMENTATION

The ADR program will be implemented and training will be conducted through a variety of methods designed to involve employees and inform them about mediation as an alternative to EEO counseling and as an adjunct to the processing of formal complaints.

A. Awareness Education

The ADR program for mediating EEO disputes will be explained to all FLRA management and employees in the following manner:

1. A memorandum signed by the FLRA Chairman, the General Counsel, the Chair of the Federal Service Impasses Panel, and the UAE President will be sent to all employees describing the ADR mediation process as an alternative to traditional EEO counseling and/or formal EEO litigation;

2. An e-mail announcement will be sent to all employees when the program begins; and

3. Detailed information concerning the ADR program, including a copy of the program, will be placed on the FLRA's Home Page.

B. Training

Training about ADR, mediation, and the EEO process will be a vital factor in the successful implementation of the program at the FLRA. Employees need detailed information about the two alternatives (counseling or ADR available at the informal stage). Participants in mediation need to know what to expect and the roles of the parties. The FLRA's full support for the ADR process should be communicated.

The EEO Director will provide a briefing (approximately 30 minutes) about the ADR program to all staff during the first 3 months of the program. In addition, a portion of the New Employee Orientation will include a description of this program.

VII. EVALUATION

A. Data Requirements

Management and union representatives will evaluate the program and how it is functioning on an annual basis. The following statistical data will be used:

1. The total number of EEO cases filed;

2. The number of disputes referred to ADR, the stage of referral (informal or formal), and the number of those referred which were resolved;

3. The parties' level of satisfaction with the ADR process, and the reasons for satisfaction or dissatisfaction (Participant's Comments Form - Form E);

4. The amount of time spent attempting to resolve the dispute using the ADR process; and

5. The estimate of cost savings, showing the criteria used to calculate such cost savings.

B. Data Gathering

The ADR program will be evaluated by using the following questionnaires: Mediator's Reporting Form (Form D) and Participants' Comments (Form E). The distribution of evaluation questionnaires and the gathering of information will be the responsibility of the EEO Director or his/her designee. The EEO Director will have the responsibility of summarizing the information to be evaluated and will develop an annual report on the status and/or accomplishments of the ADR program. These summary reports will be shared with the FLRA Chairman, the Chair of the Federal Service Impasses Panel, the General Counsel, and the UAE President. As the ADR program evolves, the evaluation concepts along with the measurement tools may be refined or modified after negotiation with the UAE.

Note: All forms referenced throughout this document are available in a Form Book to be distributed to all EEO counselors and staff administering this ADR program. Employees who would like copies can see the Human Resources staff or the EEO Director.

Form A

FEDERAL LABOR RELATIONS AUTHORITY

ALTERNATIVE DISPUTE RESOLUTION REQUEST/REFERRAL

Case #:

1. Date of Request/Referral:

2. Name of Requester:

3. Organization of Requester:

4. Telephone # of Requester:

5. Briefly summarize the dispute which you wish to resolve:

6. Note other parties to this dispute (these may be referenced in #5 above. Please provide name and telephone number if possible).

7. I understand that Alternative Dispute Resolution is a joint effort between the parties to facilitate an expedited resolution of disputes involving them.

I understand that the pre-complaint processing period shall be extended to 90 days for the purposes of resolving the dispute through the ADR process.

I understand that my right to continue with the administrative complaints process will remain intact and available to me should an agreement not be reached using ADR, provided I have timely filed a formal complaint.

I understand that I have the right to representation (attorney or other person of my choice) throughout this process.

_____	_____
Signature of ADR Requester	Date of Request

Form B

AGREEMENT TO MEDIATE

The parties agree to engage in mediation to attempt resolution of issues pertaining to the dispute of alleged employment discrimination. The parties understand that mediation is voluntary and may be ended by the requester at any time.

The parties understand that the mediators) has/have no authority to decide the case and is/are not acting as advocates) or attorneys) for any party.

Mediation is a confidential process. Any documents submitted to the mediators) and any statements made during the mediation are for settlement purposes only. The parties agree not to subpoena the mediators) or any documents prepared by or submitted to the mediator(s). In no event will the mediators) voluntarily testify for any party or submit any type of report concerning this mediation. Confidentiality will not extend to threats of imminent physical harm.

No party is bound by anything said or done at the mediation unless a written agreement is reached and executed by the parties and/or their representatives. If an agreement is reached, it will be reduced to writing and, when signed and approved by the parties and/or their representatives, will be binding upon them.

By signature below, we acknowledge that we have read, understand, and agree to this mediation process.

_____	_____
Aggrieved person	Date
_____	_____
Management/Settlement Official	Date
_____	_____
Mediator(s)	Date

Form C

MEDIATION AGREEMENT

Memorandum of agreement in the complaint(s) of (name), Case Numbers(s) if applicable _____.

The Aggrieved person, (name), and the Federal Labor Relations Authority (FLRA), the parties to this agreement, hereby agree and stipulate as follows:

TERMS OF AGREEMENT

1. The FLRA (name of Center/Division/Office) _____ agrees to_____

2. The Aggrieved person name agrees to withdraw or dismiss with prejudice all informal/formal complaints of illegal discrimination related to and including the complaint(s) identified above which he/she has filed against the FLRA.

The Aggrieved person represents that no other action or suit with respect to the matters encompassed by the complaint referenced herein or to related matters occurring at any time up to and including the effective date of this agreement has been or will be filed in or submitted to any court, administrative agency, or legislative body. If any other related complaint was filed prior to the effective date of this agreement, (name) _____ agrees that it too is covered by the terms of this agreement and, by signing this agreement, withdraws and dismisses each with prejudice.

This agreement is not intended as, and will not be construed by either party to constitute, an admission or statement by either party as to the validity of any legal position or factual contention advanced in the above referenced complaint(s). Nor does it indicate in any way the views of either party as to the substantive merits of the complaint(s).

Issues related to compliance under this agreement shall be resolved in accordance with 29 C.F.R. § 1614.504.

This agreement shall become effective as of the date the last signature is obtained below. This settlement agreement constitutes the entire agreement between the aggrieved person and FLRA, and there are no other representations or obligations except for those enumerated herein. The parties agree that the terms of this agreement constitute a full and complete satisfaction and settlement of all claims which the aggrieved person may have against the FLRA, its officers, agents or employees which are encompassed by or arise out of the instant complaint(s).

The aggrieved person acknowledges that he/she clearly and fully understands the terms and conditions of this agreement and fully agrees to its terms. Further, the aggrieved person acknowledges having voluntarily entered into this agreement.

_____ _____

Aggrieved person Date

_____ _____

Name of Management/Settlement Official Date

Form D

FLRA

ADR MEDIATOR REPORTING FORM

INSTRUCTIONS: This form is to be completed immediately upon closing of your case. Please return the form to the EEO Director.

1. Mediator's Name:

2. Office Telephone Number:

3. ADR Case Number:

4. Date of Sessions and Time Spent:

1. 5.

2.

3.

4.

5. If either party had a representative in attendance please indicate which party did so:

A. Employee	B. Manager or 2nd Party
1. _____ Attorney	1. _____ Attorney
2. _____ Other	2. _____ Other

6. OUTCOME:

_____ Not Settled _____ Settled prior meeting

_____ Settled, agreement signed _____ Partial settlement

7. GENERAL: In the preparation process, it was determined that ADR was appropriate to address this dispute. In your opinion was it appropriate in this case?

1. Yes/No
2. Why or why not?

8. Other comments or suggestions:

_____ _____

Signature Date

Form E

FLRA

PARTICIPANT'S COMMENTS - ADR

To assist in improving the ADR process, please take a few minutes to answer the questions below. Send your completed survey to the EEO Director at FLRA, 607 14th Street, NW, Washington, D.C. 20424-0001. All personal information will be kept confidential.

Please circle the letter which best reflects how you feel about each of the following statements:

1- Strongly Agree 2- Somewhat Agree 3-No opinion
4- Somewhat Disagree 5- Strongly Disagree

1. The Mediator explained the ADR program clearly so that I knew what to expect during the ADR process. 1 2 3 4 5

2. The Mediator allowed me and/or my representative to fully present my case.
   1 2 3 4 5

3. The Mediator carefully listened to my side of the case.
   1 2 3 4 5

4. The Mediator treated all parties fairly.
   1 2 3 4 5

5. The Mediator asked appropriate questions.
   1 2 3 4 5

6. The Mediator helped facilitate realistic options for settling the dispute.
   1 2 3 4 5

7. Did you reach an agreement and settle your case?

   Yes/No

8. Did the ADR process help you understand the other party's/parties' concerns? Yes/No

9. Did you feel that the process helped the other party or parties understand your concerns?

10. If you ever have a similar dispute again, would you:

    Circle the letter below that indicates your response.

    A = Talk to the other party first.
    B = Ask for ADR intervention.
    C = Use the standard complaint processes available to you.

11. How satisfied are you overall with the ADR process?

12. Please provide any comments you wish to make regarding the process in the space below:

_____ _____

Signature (Optional) Date

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

INSTRUCTIONS

FLRA 3752

SUBJECT: EMPLOYEE DISCIPLINE AND ADVERSE ACTIONS

TABLE OF CONTENTS

DISTRIBUTION: FLRA **OPI: HRD**

CHAPTER I. GENERAL

A. **Purpose**. This Instruction sets forth the FLRA's policy and processes for dealing with employee misconduct and/or poor performance, and for furloughing employees for 30 days or less because of lack of work or funds.

B. **Cancellation**. This Instruction supersedes FLRA Instructions No. 3810.1, Employee Discipline, dated February 13, 1986, and No. 3830.1, Adverse and Performance Based Actions, dated February 19, 1986.

C. **Scope**.

1. The formal disciplinary and adverse actions described in this Instruction provide the tools and procedures for managers to apply in administering employee discipline. Employees who are covered by Chapters II and III of this Instruction generally fit into two categories:

   (a) Those who commit serious or repeated acts of misconduct that are unacceptable in the work place and that would cause a loss of efficiency if allowed to continue; and

   (b) Those who fail to meet performance expectations. (Note: Procedures set forth in this Instruction are optional for performance-based problems. 5 CFR 432 procedures established specifically for performance-based actions are set forth in FLRA Instruction 3430.2A)

2. Actions covered by this Instruction include:

   (a) Reprimands;

   (b) Suspensions;

   (c) Reductions in grade or pay;

   (d) Furloughs of 30 days or less; and

   (e) Removals.

3. This Instruction does not apply to:

   (a) Suspensions for National Security under 5 U.S.C. 7532;

(b) Reductions-in-Force under 5 U.S.C. 3502;

(c) Reduction in grade back to the grade previously held of a new manager or supervisor who fails to successfully complete the one-year probationary period under 5 U.S.C. 3321(a)(2);

(d) An action initiated by the Office of the Special Counsel under 5 U.S.C. 1215 or actions against Administrative Law Judges under 5 U.S.C. 7521; and

(e) Removal during a probationary or trial period, or during a temporary or time-limited appointment.

D. **Applicability**. This Instruction applies to all FLRA employees in excepted and competitive General Schedule positions. It does not apply to employees serving under a temporary or time-limited appointment. With the exception of Chapter 4, Furloughs of 30 Days or Less, it does not apply to those who are in a probationary or trial period. For employees in the bargaining unit, if any part of this Instruction is in conflict with the collective bargaining agreement, the agreement applies.

E. **Policy**. The Agency's policy is that:

1. Supervisors will timely identify and take appropriate action to notify employees of conduct and/or performance problems in order to correct the problem using informal processes such as counseling, training, and closer supervision.

2. If good faith efforts to resolve the problem informally fail, or if the problem is so severe that informal resolution is impractical, supervisors will apply discipline consistently and appropriate to the situation.

3. FLRA will attempt other means of avoiding costs in times of temporary budget shortfalls or mission lags so that furloughing employees is a last resort to accommodate the temporary deficit.

F. **References**.

1. Title 5 United States Code (U.S.C.) Chapter 75, Adverse Actions;

2. Title 5 Code of Federal Regulations (CFR) Part 752, Adverse Actions;

3. FLRA Instruction No. 3771, Administrative Grievance System;

4. FLRA/UAE Collective Bargaining Agreement;

5. FLRA Instruction No. 3430.2A, dated August 19, 1998, General Schedule Performance Management Plan; and

6. FLRA Instruction 3431.2, dated October 1, 1996, Performance Management for the Senior Executive Service.

G. **Definitions**.

1. Adverse action refers to suspensions for more than 14 days, reductions in grade or pay, furloughs for 30 days or less, and removals.

2. Current continuous employment means a period of employment immediately preceding a suspension action in the same or similar position without a break in Federal civilian employment of a workday.

3. Day means calendar day.

4. Disciplinary action refers to reprimands and suspensions of 14 days or less.

5. Employee, for purposes of Chapters 2 and 3, means:

a. An individual in the competitive service who:

(1) is not serving a probationary or trial period under an initial appointment; and

(2) has completed one year or current continuous employment under other than a temporary appointment limited to one year or less.

b. A preference eligible in the excepted service who has completed one year of current, continuous employment in the same or similar positions.

c. An individual in the excepted service other than a preference eligible who:

(1) is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(2) has completed two years of current continuous service in the same or similar positions on other than a temporary appointment limited to two years or less.

6. Furlough means placing an employee in a temporary status without duties or pay because of lack of work or funds or other non-disciplinary reason.

7. Grade means a level of classification under a position classification system.

8. Indefinite suspension means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or other agency action. The indefinite suspension continues to an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

9. Pay means the rate of basic pay that is fixed by law or administrative action for the position held by the employee.

10. Preference eligible means veterans, spouses, widows, or mothers who meet the definition of "preference eligible" in 5 U.S.C. 2108. Preference eligibles are entitled to have 5 or 10 points added to their earned scores on a civil service examination, and are accorded a higher retention standing in reduction-in-force. Preference does not apply to in-service placement actions such as promotions.

11. Reprimand is a formal memorandum -- the least severe form of formal discipline for a first or relatively minor offense -- that remains in the employee's Official Personnel Folder (OPF) for an established period of at least one, but no more than three, years. Reprimands may be expunged before their expiration dates if the appropriate supervisor determines they should be expunged or the employee leaves the FLRA, whichever comes first.

12. Suspension means placing the employee, for disciplinary reasons, in a temporary status without duties and pay.

CHAPTER II. DISCIPLINARY ACTIONS: REPRIMANDS AND SUSPENSIONS OF 14 DAYS OR LESS

A. **Standard for Action**. FLRA may reprimand an employee or suspend an employee for 14 days or less under this Chapter only for such cause as will promote the efficiency of the service.

B. **Procedures**.

1. Supervisory responsibilities before taking action.

a. In cases of employee misconduct or poor performance, supervisors should

consider the facts surrounding the circumstances carefully to ensure that formal action is warranted. This can include having a discussion with the employee and the employee's representative, if any.

b. The supervisor or designated FLRA representative should carefully document in writing the facts surrounding the offense. This documentation may take the form of a written memorandum or other internal document or may be reflected in the written reprimand or notice of proposed action that sets forth the reasons for the proposal.

c. In choosing the appropriate penalty, the supervisor should consider how he/she has treated similar instances of misconduct and/or poor performance in order to apply discipline consistently. Supervisors also must consider the Douglas Factors that are set forth herein as Appendix A.

d. If the supervisor, after discussion with the Human Resources Division (HRD), determines that formal action is not required, management should document the occurrence and the reasons for the decision in a memorandum for record. The memorandum is not filed in the employee's OPF, but is retained in a separate agency file in case the problem continues or recurs within a one year period. Copies of the memorandum should be provided to the employee or the employee representative, if the employee designates a representative.

e. When the supervisor, in close coordination with the HRD, decides that formal discipline is warranted, he or she prepares appropriate notice -- which, for a reprimand, is a notice of reprimand; and, for a suspension from duty without pay for up to fourteen days, is a notice of proposed action.

2. Employee entitlement.

a. An employee reprimanded under this Chapter is entitled to a written reprimand that provides both specific information regarding the offense that is the basis for the reprimand and the length of time (one to three years) that the reprimand will remain in the employee's OPF.

b. An employee suspended under this Chapter is entitled to:

(1) Notice of the proposed suspension. The written notice shall inform the employee of the nature of the offense in enough detail that the employee can respond to the charges. It informs the employee of the specific duration of the advance notice period, of the proposed suspension, and of his or her right to review the material that is relied upon to support

the reasons for the action given in the notice.

(2) Representation. An employee whose suspension is proposed is entitled to be represented by an attorney or other representative. FLRA may disallow an employee's representative if the representative's activities would cause a conflict of interest or position, or if release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(3) Employee answer. The employee will be given a reasonable time to answer a proposal of suspension, but not less than 24 hours. The answer may be presented orally, in writing, or both ways, and may include affidavits and other documentary evidence in support of the answer. If an employee makes only an oral response, the FLRA representative to whom the employee responds summarizes the points made by the employee and provide a copy of the summary to the employee or the employee's representative, if the employee designates a representative.

(4) FLRA decision. The employee will be given a timely written decision. In arriving at its written decision, FLRA may consider only the charges specified in the notice of proposed suspension and will consider any response made by the employee or the employee's representative to the designated FLRA representative. The FLRA decision will be to impose either the proposed penalty, a lesser penalty, or no penalty at all. FLRA will deliver the notice of decision to the employee or the employee's representative, if the employee designates a representative, at or before the time the action is to be effective.

C. **Introduction of Medical Evidence**.

1. If the employee wishes FLRA to consider any medical problem which contributed to the conduct or performance problem, the employee will be given a reasonable time to provide medical documentation in accordance with the applicable provisions of 5 CFR Part 339. Whenever possible, the employee will provide the medical documentation within the time limits allowed for the response to the proposed action.

2. After its review of medical evidence, FLRA is authorized by 5 CFR 339.301 - 304 to offer an agency-sponsored medical examination. In this case, FLRA will name the physician and pay for the costs associated with the examination. If FLRA determines that an agency-sponsored examination is necessary to make an informed decision

regarding the proposed action, FLRA will notify the employee in writing of the reasons for requiring the examination and the consequences if the employee fails to comply.

D. **Employee Right to File a Grievance**. Employees may not grieve a proposed disciplinary action. Employees against whom formal disciplinary action, including a reprimand, is affected may file a grievance. UAE bargaining unit members who are disciplined under this Chapter under circumstances that fall within the scope of the collective bargaining agreement may file a grievance using the procedures set forth in the FLRA/UAE Agreement only. Non-bargaining unit employees must use the FLRA Administrative Grievance Procedure that is set forth in FLRA Instruction No. 3771.

E. **Agency Records**.

1. FLRA will maintain copies of the written summary of the investigation of misconduct, if any, or instances of poor performance; the notice of proposed action; the summary of the employee's oral response and/or the employee's written response; the notice of decision; and any other material documenting the action in an Agency disciplinary action file maintained in the HRD.

2. Reprimands will state the duration (from one to three years) in which the reprimand will remain a part of the Employee's Official Personnel Folder (OPF). Reprimands are temporary documents and, as such, are filed on the left side of the OPF. Reprimands must be removed from the OPF at the expiration date, at the time the employees leaves FLRA, if the supervisor decides before the scheduled expiration date that the record should be expunged, or if the reprimand is canceled due to an employee grievance or complaint.

3. Suspensions are documented by Standard Forms (SFs) 50, which are permanent records filed on the right side of the employee's OPF. Suspension SFs 50 are removed from the OPF only if the action is canceled or the suspension is mitigated due to an employee grievance or complaint.

CHAPTER III. ADVERSE ACTIONS: REMOVAL, REDUCTION IN GRADE, PAY, AND SUSPENSION FOR MORE THAN 14 DAYS

A. **Standard for Action**. FLRA may remove an employee from Federal service, reduce an employee in grade and/or pay, or suspend the employee for more than 14 days for misconduct or poor performance under this Chapter only for such cause as will promote the efficiency of the service.

B. **Procedures**.

1. Supervisory responsibilities before taking action.

a. In cases of employee misconduct or poor performance, supervisors must gather and consider the facts surrounding the circumstances carefully to ensure that formal action is warranted.

b. The supervisor or designated FLRA representative must carefully document in writing the facts surrounding the offense or the instances of poor performance. This documentation may take the form of a memorandum or other internal document, or a letter of proposed action that sets forth the reasons supporting the proposal.

c. In choosing the appropriate penalty, the supervisor should consider how he/she has treated similar instances of misconduct and/or poor performance in order to apply discipline consistently. Supervisors also must consider the Douglas Factors that are set forth herein as Appendix A.

d. Supervisors should coordinate with the HRD to determine if this Instruction provides the appropriate processes for taking action on a performance problem. Examples of reasons that a supervisor would choose this process include: a situation that involves both poor performance and misconduct, and a situation in which the supervisor wishes to use a history of performance problems that extend back beyond one year. If a supervisor takes a performance-based action under this Chapter, the supervisor must consider whether the employee has had appropriate notice of performance deficiencies and a reasonable opportunity to improve the deficiencies before he/she proposes an adverse action. As mentioned in the example above, and different from performance-based actions taken under 5 CFR 432, management can consider performance deficiencies that occurred further back than one year from the notice period. Although a supervisor is not required to provide a formal opportunity period to improve performance under this Chapter, he or she must be prepared to prove that the employee had appropriate notice and to justify the action before a third party under the higher "preponderance" standard of evidence rather then the "substantial" standard applied to actions taken under 5 CFR 432.

e. If the supervisor, in discussion with the HRD, determines that formal action is not required, management should document the occurrence and the reasons for the decision in a memorandum for record. The memorandum is not filed in the employee's OPF, but is retained in a separate agency file in case the problem

continues or recurs. Copies of the memorandum should be provided to the employee or the employee's representative.

f. When the supervisor, in close coordination with the HRD, decides that adverse action is warranted, he or she prepares a notice of proposed action.

2. Employee entitlement.

a. Notice of proposed action. The employee against whom an adverse action is being considered has the right to a written notice of proposed action at least 30 days before the action will be effected. The notice will explain the offense in enough detail that the employee can respond to the charges. It also advises the employee of the specific action being proposed and of the employee's and his or her representative's right to review the material and records relied upon to propose the action. FLRA may not use material that cannot be disclosed to the employee, his or her representative, or his or her designated physician under the Privacy Act.

b. Representation. An employee covered by this Chapter is entitled to be represented by an attorney or other representative. FLRA may disallow an employee's representative only if the representative's activities might cause a conflict of interest or position or whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

c. Employee answer.

(1) FLRA will give the employee, and the employee representative, if any, a reasonable amount of official time, to extend over not less than seven days, to review the material relied upon to support its proposal and to prepare an answer and to secure affidavits, if the employee is otherwise in a duty status.

(2) The employee may make an oral response, provide a written response, or respond in both ways to a designated FLRA official.
The employee may provide affidavits or other documentary evidence to support the answer.

(3) FLRA will designate an official to hear the employee's oral response who has the authority either to make or recommend a final decision on the adverse action. If an employee makes only an oral response, the FLRA representative to whom the employee responds should

summarize and document the points made by the employee for the record and provide a copy of the summary to the employee or the employee's representative, if the employee designates a representative.

d. FLRA decision. In arriving at its decision, FLRA must consider only the reasons for the action set forth in the notice of proposed action. It must also consider any information provided by the employee and the employee's representative, if any, in response to the charges. The decision must be to impose either the proposed penalty, a lesser penalty, or no penalty at all. FLRA will deliver the notice of decision to the employee at or before the time that the action will be effected and advise the employee of his or her grievance or appeal rights.

C. **Employee Status During Notice Period**. Under ordinary circumstances, an employee, whose removal, reduction in grade and/or pay, or suspension, including indefinite suspension has been proposed, will remain in a duty status in his or her regular position during the advance notice period. If management concludes that the employee's presence in his/her position of record may be detrimental to the employee or unduly disruptive to coworkers, management may detail the employee to another position during the notice period. In those rare circumstances in which the FLRA determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the FLRA may elect either one or a combination of the following alternatives:

1. Assigning the employee to duties where he or she is no longer a threat to safety, the FLRA mission, or Government property;

2. Allowing the employee to take leave or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absent without leave if the employee has absented himself from the workplace without requesting leave);

3. Curtailing the notice period when the FLRA can invoke the "crime" provision of 5 CFR 752.404(d)(1). This provision, which is described below, may be evoked even in the absence of judicial action if the FLRA has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

4. Placing the employee in a paid, non-duty status during the notice or proposed action period.

D. **"Crime" Provision**. In accordance with 5 CFR 752.404(d)(1), FLRA may except the 30 days advance written notice if it has reasonable cause to believe that the employee has

committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension (including an indefinite suspension). If this is the case, FLRA may require the employee to furnish his or her answer to the proposed charges, including affidavits and other documentary evidence, within a time that is reasonable under the circumstances -- but not less than seven days. If the circumstances require the employee to be kept away from the work site, FLRA may place the employee in a non-duty status with pay for the time necessary to effect the action.

E. **Introduction of Medical Evidence**.

1. If the employee wishes FLRA to consider any medical problem which contributed to the conduct or performance problem, the employee will be given a reasonable time to provide medical documentation in accordance with the applicable provisions of 5 CFR 339. Whenever possible, the employee will provide the medical documentation within the time limits allowed for the response to the proposed action.

2. After its review of medical evidence, FLRA is authorized by 5 CFR 339.301 - 304 to require an agency-sponsored medical examination. In this case, FLRA will name the physician and pay for the costs associated with the examination. If FLRA determines that an agency-sponsored examination is necessary to make an informed decision regarding the proposed action, FLRA will notify the employee in writing of the reasons for requiring the examination and the consequences if the employee fails to comply.

3. If the employee has the requisite years of service under either the Civil Service Retirement System or the Federal Employees Retirement System, FLRA will provide the employee with information regarding disability retirement. In doing so, FLRA will remain aware of its affirmative obligations under the provisions of 19 CFR 1613.704, that require reasonable accommodation of a qualified employee who is disabled.

4. In accordance with 5 CFR 831.501(d), an employee's application for disability retirement will not preclude or delay any other appropriate personnel action. 5 CFR 831.1203 describes the basis under which FLRA will file an application for disability retirement on behalf of the employee.

F. **Employee Grievance and Appeal Rights**. An employee may not grieve or appeal a proposed action. An employee against whom action is taken under this Chapter is entitled to appeal the action to the Merit Systems Protection Board (MSPB). If the FLRA/UAE collective bargaining agreement includes appealable actions in the scope of the negotiated procedure, a bargaining unit employee may grieve or appeal, but not both.

G. **Agency Records**.

1. FLRA will maintain copies of the written summary of the investigation, if any; the notice of proposed action; the summary of the employee's oral response, if any; the employee's written response, if any; the notice of decision; and any other material documenting the disciplinary action.

2. Suspensions, reductions in grade and/or pay, and removals are documented on Standard Forms (SFs) 50, which are permanent records filed on the right side of the employee's OPF.

CHAPTER IV. FURLOUGHS FOR 30 DAYS OR LESS

A. **Standard for Action**. FLRA may take action under this Chapter for reasons of lack of money or work.

B. **Procedures**. When FLRA decides that it must furlough employees for 30 days or less, it will follow procedures described below:

1. Notice of proposed furlough.

   a. Employees are entitled to 30 days advance written notice of a pending furlough of 30 days or less. The notice will include the employee's and the employee representative's, if any, right to review the material relied upon to determine that the furlough is necessary.

   b. When some but not all employees in a competitive level are being furloughed, the notice of proposal will state the basis for selecting particular employees for furlough, as well as the basis for the furlough.

   c. The advance written notice and opportunity to answer are not required for furloughs without pay caused by unforeseeable circumstances such as sudden emergencies requiring immediate curtailment of activities or acts of nature.

2. Representation. An employee covered by this Chapter is entitled to be represented by an attorney or other representative. FLRA may disallow an employee's representative if the representative's activities might cause a conflict of interest or position or whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

3. Employee's answer.

a. Except as provided above, FLRA will give the employee a reasonable amount of official time to review the material relied upon to support the proposed furlough and to reply orally, in writing, or both ways.

b. FLRA will designate an official to hear the employee's oral response who has the authority either to make or recommend a final decision on the furlough action. If an employee makes only an oral response, the FLRA representative to whom the employee responds must summarize and document the points made by the employee for the record and provide a copy of the summary to the employee and the employee's representative, if any.

4. FLRA decision. In arriving at its decision, FLRA will consider only the reasons for action set forth in the notice of proposed action. It will also consider any information provided by the employee and the employee's representative, if any, in response to the proposed notice. FLRA will deliver the notice of decision to the employee at or before the time that the furlough will be effected and advise the employee of his or her appeal rights.

C. **Employee Appeal Rights**. An employee against whom action is taken under this Chapter is entitled to appeal the action to the MSPB.

D. **Agency Records**.

1. FLRA will maintain copies of the notice of proposed action; the summary of the employee's oral response, if any; the employee's written response, if any; the notice of decision; and any other material documenting the furlough.

2. Furloughs are documented on Standard Forms (SFs) 50, which are permanent records filed on the right side of the employee's OPF.

CHAPTER V. PROGRAM ADMINISTRATION AND EVALUATION

The HRD administers and evaluates these programs and sets forth the policies and procedures set forth in this Instruction. Questions and suggestions for improvements are welcome and should be directed to the HRD.

This Instruction is effective September 2, 1998.

_____Signed_____
Solly Thomas, Executive Director

APPENDIX A. Douglas Factors

APPENDIX A. DOUGLAS FACTORS

Douglas Factors are the factors set forth by the Merit Systems Protection Board in its precedent setting case, Douglas vs Veteran's Administration, 5 M.S.P.R. 280 (1981). Supervisors must consider Douglas Factors when deciding appropriate penalties for employee misconduct, as follows:

(1) Nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities;

(2) Employee's job level and type of employment, including fiduciary roles, contacts with the public, and prominence of the position;

(3) Employee's past disciplinary record;

(4) Employee's past work performance, including length of service, ability to get along with fellow workers, ability to do the work, and dependability;

(5) Affect of the offense on the employee's ability to perform effectively and the supervisor's confidence in the employee;

(6) Consistency of the penalty with those imposed upon other employees for same or similar offenses;

(7) Notoriety of the offense and its impact upon the FLRA's reputation;

(8) Clarity with which the employee was on notice that he or she was violating rules and had been warned about the misconduct or performance;

(9) Potential for the employee's rehabilitation;

(10) Mitigating circumstances such as unusual job tensions or sexual harassment; and

(11) Adequacy and effectiveness of alternative sanctions to deter such future misconduct or poor performance.

No. FLRA 3410

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
HUMAN RESOURCES DIVISION

EMPLOYEE TRAINING AND DEVELOPMENT

Table of Contents

FLRA Instruction No. 3410

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
HUMAN RESOURCES DIVISION

SUBJECT: Employee Training and Development

Chapter 1. General Provisions

1. **Purpose.** This Instruction prescribes the policies and procedures for implementing and administering the Employee Training and Development Program at the Federal Labor Relations Authority (FLRA or the Agency).

2. **Cancellation.** This Instruction supersedes and cancels FLRA Instruction 3410.1, dated November 7, 1984.

3. **References.**

   a. Training - Title 5, United States Code (U.S.C.), Chapter 41
   b. Training - Title 5, Code of Federal Regulations (CFR), Part 410
   c. Providing for the Further Training of Government Employees - Executive Order (E.O.) 11348, dated April 20, 1967
   d. Time Spent in Training, Title 5, Code of Federal Regulations (CFR), 551.423

4. **Scope.** This Instruction applies to all employees within the FLRA.

5. **Policy.** Training and developmental activities represent the Agency's investment in ensuring that FLRA employees have the knowledge, skills, and abilities to perform at their full potential in support of the agency mission and improved organizational performance. The FLRA plans and provides training and developmental opportunities for its employees consistent with its mission, its strategic plan, individual career progression and performance goals, and available financial resources.

6. **Definitions.**

   a. Government facility means property owned or substantially controlled by the Government and the services of any civilian and military personnel of the Government.

b. Interagency training means training provided by one agency for other agencies or shared by two or more agencies.

c. Mission-related training is training that supports Agency goals by improving performance at any level in the Agency. This includes training that:

(1) Supports the Agency's strategic plan and performance objectives;

(2) Improves an employee's current job performance;

(3) Supports needed expansion or enhancement of an employee's current job;

(4) Enables an employee to perform current or potential duties outside the current job at the same level of responsibility; or

(5) Meets organizational needs in response to a changing environment, such as re-engineering, downsizing, restructuring, and/or program changes.

d. Retraining means training to prepare an individual for a different occupation -- in the same agency, in another Government agency, or in the private sector -- usually in connection with downsizing and career transition assistance.

e. Training means the process of providing for, and making available to, employees a planned, prepared, and coordinated program that will improve individual and organizational performance and assist in achieving the agency's mission and performance goals.

7. **Responsibilities.**

a. Managers and Supervisors identify individual and organizational training needs; work with employees to identify appropriate training and developmental activities; procure training for their employees; and evaluate the effectiveness and results of training received by their employees.

b. Employees request needed or desired training and developmental opportunities; successfully complete such activities; apply knowledge and skills gained through training to the maximum extent possible in the performance of official duties; share knowledge gained from such training activities with co-workers; fulfill continued service agreements; and -- upon completion of training -- submit an official grade or statement of course completion and a training evaluation through supervisory channels to the Human Resources Division (HRD).

c. The Director of Human Resources works with management and Agency advisory councils and boards -- such as the FLRA Executive Resources Board and the FLRA Partnership Council -- to determine policies and purposes for the Agency's training program; assign responsibilities for ensuring that purposes are achieved; delegate approval authority to the lowest possible level; establish priorities for training employees; and provide for funds and staff according to these priorities. The HRD Director publishes the Agency's training policies and procedures and designates a training and development officer to administer the Agency's program.

d. The Employee Training and Development Officer ensures effective planning and documentation of training; approves requests for training in accordance with statutory, legal and administrative requirements; evaluates the overall training and development program; procures, develops and/or conducts training courses and programs; and prepares reports.

e. The Budget and Finance Division allocates and administers funds required to meet training needs; determines and assigns proper budget categories for obligating, expending, and tracking training expenses; certifies availability of funds; and validates fund citations.

Chapter 2. Administering the Training Program

1. **Planning for Training.** All FLRA training and developmental strategies and activities are in support of effective mission accomplishment, strategic planning goals, and individual professional development. Valid training needs may be identified within the parameters of the Agency's established organizational core competencies, individual performance and career progression paths, and efforts associated with strategic planning. Changes to these parameters may occur with mission changes, organizational changes, work technology changes, or individual performance problems.

Supervisors should discuss training and developmental needs with employees in connection with the performance appraisal annual cycle -- during discussions and evaluation of past performance, and during discussions and planning of requirements for the coming rating period. In working with employees and the HRD to plan for and schedule training, supervisors should assign training priorities, as follows:

a. Priority 1 - Essential training is training that:

(1) is required by law or regulation;
(2) must be accomplished within the current annual performance appraisal cycle to prevent a direct adverse effect on mission accomplishment or to qualify an

employee for career ladder promotion; or

(3) is required to improve individual performance to avoid or support a formal performance improvement period, as prescribed by the FLRA Performance Management Plan.

b. Priority II - Needed training is training that is required to provide for systematic replacement of skilled employees. Priority II training is usually part of succession planning.

c. Priority III - Helpful training is training that will increase employee efficiency and productivity but is not necessary for current or future mission accomplishment.

Supervisors should establish specific training objectives prior to approving training. Objectives may include, but are not limited to, improving work quality, quantity, and/or timeliness, or fulfilling requirements of FLRA core competencies and career progression paths.

2. **Documenting Training Needs.** Supervisors should document individual training needs on an Individual Development Plan (IDP). IDPs are required for employees below journey-level, and are optional for those at or above the journey-levels of their positions. Supervisors and employees must review and update IDPs as needed, but at least annually. Supervisors should attach copies of IDPs for the coming performance rating year to completed performance appraisals that they submit to the HRD for processing. Appendix A is a sample IDP.

Employees in Upward Mobility Program (UMP) positions must have a documented formal training plan to identify the job requirements that the employee must satisfy to qualify for career progression. Supervisors develop these training plans in coordination with the HRD. Appendix B contains a sample training plan and trainee progress report in support of an UMP position. The UMP training plan and any optional trainee progress reports completed should be integrated into the annual performance planning and appraisal cycle.

3. **Identifying Training Sources.**

Training and development opportunities include on-the-job training, internal and external classroom training, employee self-development activities, and details and rotational assignments. Training may be provided in-house by FLRA employees or through contracts with Federal, public, or private sector contractors, including law schools and universities. It may be provided externally by the same sources. The FLRA contributes to and participates in training offered by the Small Agency Council. The HRD maintains training catalogs, pamphlets, and schedules to assist in identifying appropriate training sources to meet training needs.

4. **Requesting and Approving Individual Training.** Requests for individual training are submitted on the SF-182, Request, Authorization, Agreement, Certification of Training and Reimbursement. Usually, the first-level supervisor signs the SF-182 as Requesting Official; and the second-level supervisor signs as Approving Official. The signed SF-182 is then forwarded to the HRD for final approval, funds verification, and processing. A correctly completed SF-182 and instructions for completion are attached as Appendix D.

5. **Funding Training.** Each Component receives an annual allocation for employee training. In addition to the training allocation, each Component receives an annual allocation for travel. Within these allocations, FLRA generally pays all expenses incurred in connection with approved training. However, supervisors and employees may not make commitments to vendors regarding training until both the Budget and Finance Division and the HRD have approved the training requests.

6. **Evaluating Training.** The Agency will evaluate both individual training activities and the overall training program to determine if: (a) the Agency is successfully responding to both individual and organizational training needs; and (b) the training is resulting in desired improvements in individual and organizational performance.

   a. Individual Employee Evaluations. Employees are required to evaluate all training activities -- by completing the Evaluation portion of the SF-182 or other training evaluation forms, as appropriate. The purposes of the employee evaluation are to determine: (1) if the employee's training objectives were achieved; (2) if the employee will apply the information gained to effect performance and productivity improvements; and (3) if the employee recommends the training for future training and development programs.

   b. Supervisory Evaluation of Employee Training. Supervisors are required to discuss and evaluate training completed by their employees -- by completing the Evaluation portion of the SF-l82 or other training evaluation forms, as appropriate. The purposes of supervisory evaluations are to determine if: (1) the supervisor's training objectives for the employee were met; (2) the employee is applying the training to make measurable performance improvements; and (3) the supervisor recommends the training for other employees or future use.

   c. Training Program Evaluation. The HRD uses the individual course evaluations in assessing the FLRA training program. It also integrates supervisory follow-on job performance assessments into the program evaluation. Appendix C provides examples of performance objectives and evaluation measurements that supervisors may apply to establish goals for and measure improvements in individual or organizational performance as a result of training.

7. **Official Training Records.** The HRD maintains official records of completed training in employee Official Personnel Folders. These records include SF 182s and any other written documentation of completed training -- such as IDPs, lists of participants in-house training, and UMP training agreements. HRD uses the Automated Resources Training System (ARTS) program to maintain or enable separate offices to maintain a data base of individual training histories for training planning and reporting purposes.

Chapter 3. Special Provisions and Requirements

1. **Training to Obtain an Academic Degree.** Training for the sole purpose of enabling an employee to obtain an academic degree is prohibited. However, academic training that is clearly directed toward developing knowledge and skills necessary for employees to perform the duties of either a present or anticipated assignment may be authorized on a course-by-course basis. A degree obtained as a result of such training may be an incidental benefit of the training.

2. **Variations in Work Schedules.** Supervisors may approve variations in the administrative workweek to permit employees to schedule courses at their own expense in nearby educational institutions, when the scheduling does not appreciably interfere with the accomplishment of work assignments.

3. **Employee's Failure to Complete Approved and Scheduled Training.** In accordance with 5 CFR 410.405, if an employee fails to satisfactorily complete training due to negligence or willful misconduct, the employee shall refund those expenses incident to the training--other than salary and travel costs. The approving officials listed in paragraph 4b below may waive, in whole or part, the right of the FLRA to recover when:

   (a) The employee completed most but not all of the required period of service;

   (b) The employee resigned because of illness or the serious illness of a member of the immediate family; or

   (c) The employee is unable to make payment because of severe financial hardship.

4. **Continued Service Agreements.**

   a. General. An employee selected for classroom or developmental activities at retreats or conferences that are Agency-funded and in excess of 80 hours will be required to sign a written continued service agreement. The employee must agree to serve in the FLRA at least three times the length of the training.

   b. Failure to Fulfill Continued Service Agreement. If an employee resigns or transfers from

the FLRA before completing the service required by a continued service agreement, the employee shall refund those expenses incident to the training -- other than salary and travel costs -- unless the Agency waives such payment. Approval authorities for such waivers are: the FLRA Executive Director for Authority employees; the Director of Operations, for the Office of the General Counsel employees; and the Executive Director of the Federal Service Impasses Panel (FSIP), for FSIP employees.

5. **Accepting Contributions, Awards, and Payments from Non-Government Organizations.** Only the FLRA Executive Director, advised by the Solicitor, can determine whether an employee can accept a contribution, award or payment such as a fellowship, scholarship, award or grant, or payment to defray expenses incident to training from non-government organizations.

Chapter 4. Program Administration and Evaluation

This Instruction is administered by the HRD. Questions and suggestions for improvement are welcome and should be submitted directly to the HRD.

This Instruction is effective January 30, 1998.

Solly Thomas, Executive Director
Federal Labor Relations Authority

APPENDIX A Individual Development Plan

INDIVIDUAL DEVELOPMENT PLAN

PURPOSE OF PLAN (e.g., career progression, new technology, etc.) Career Progression

NAME OF EMPLOYEE
John Doe

POSITION TITLE, PAY PLAN, SERIES, AND GRADE
General Attorney (Labor), GS-905-09

ORGANIZATION
OGC

DEVELOPMENTAL NEEDS (e.g., Improve writing skills, increase knowledge of...)	PRIORITY	TRAINING SOURCE (e.g., course, vendor, on-job-training, rotational assignment, etc.)	DATE	TOTAL HOURS	STATUS/COMMENTS (Optional) (e.g., completed; course met needs; additional training needed; etc.)
FLRA's functions, policies & procedures	1	Orientation - FLRA		2/21/97 8	Completed
FITE Programs	2	OJT			
FLRA ULP Case Handling Manual	3	Reading & Research Assignments			

(CONTINUE ON REVERSE, IF NEEDED)

CERTIFICATION: I certify that the training, development, or education identified in this plan constitutes a valid management need for maximum performance of mission requirements and has been developed for the purpose of increasing the employee's performance in his or her current position or to prepare him or her for an identified target assignment.

EMPLOYEE'S SIGNATURE AND DATE **SUPERVISOR'S SIGNATURE AND DATE** **REVIEWING OFFICIAL'S SIGNATURE AND DATE**

APPENDIX B Sample Training Plan

1. **TRAINEE**: _____ **ENTRY POSITION**: Labor Relations Assistant, GS-203-05

2. **Target Position**: Labor Relations Specialist, GS-233-09

3. **Length of Training**: 2 ½ years

4. **Date of Entrance into Program**: June 9, 1997

5. **Target Date of Completion**: December 9, 1999

6. **Training Plan**: The trainee will be guided through successively difficult and varied duties within the specialized field of labor relations. This program area includes knowledge of:

   (1) Personnel management and labor relations theories, principles, and practices;

   (2) Laws, Executive Orders, regulations, policies, and concepts pertaining to Federal labor relations; and

   (3) Current issues, practices, problems, and precedents in Federal and non-Federal sector labor relations.

   In addition to the knowledge required above, the trainee will receive training and on-the-job experience to help the trainee to acquire the following skills and abilities:

   (1) Ability to establish and maintain effective work relationships with local and national representatives of unions and with agency managers and supervisors, with full consideration of the bilateral nature of labor relations;

   (2) Ability to balance labor relations requirements against overall management goals;

   (3) Ability to perform and/or guide others in the negotiation of labor agreements;

   (4) Ability to provide guidance and advice to management on the implementation and application of negotiated agreements;

   (5) Tact, discretion, ability to obtain cooperation of others;

   (6) Skill in written and oral communications; and

   (7) Ability to analyze facts and exercise originality.

APPENDIX B (Continued)

7. **Reading and Study**: Trainee will be expected to read and learn selected regulations and procedures as well as current-event articles relating to the labor relations field.

8. **On-the-Job Training**: Trainee will receive direct and explicit training on the functions, procedures and programs of the FLRA, specifically relating to the above knowledge, skills and abilities.

9. **Off-the-Job Training**: Trainee may be enrolled in appropriate Office of Personnel Management, other Federal sector training courses, as available and appropriate, as well as applicable courses in non-Government facilities.

10. **Evaluation**: Written supervisory evaluations and trainee reports will be submitted every 90 days.

11. **Completion**: Satisfactory completion of this training plan will result in the trainee being reassigned or promoted to the position of Labor Relations Specialist, GS-233-09. Trainees who fail to satisfactorily complete this program will be returned to their former position, to a position of similar duties and responsibilities, or to a position of duties similar to their former position (in the case of employees taking a downgrade) at a lower grade level.

_____

SIGNATURE OF TRAINEE

_____

SIGNATURE OF SUPERVISOR

APPROVED BY:

_____

HRD REPRESENTATIVE

APPENDIX B (Continued)

FEDERAL LABOR RELATIONS AUTHORITY
Trainee Progress Report
(FLRA Upward Mobility Program)

TRAINEE: _____ **Report #:** _____

1. **Major Work Assignment**: (Describe briefly what you did.)

2. **Conferences Attended**: (List conferences attended and describe your participation.)

3. **Courses Completed or Currently Enrolled In**: (List titles and benefits you have derived from each course - describe.)

4. **Directed Reading, if Applicable**: (List books and other important items read which are relevant to your target position.)

5. **Trainee's Evaluation of His/Her Progress**: (Indicate extent to which the program is meeting objectives as described to you. Describe any weaknesses in the program and any problems you have encountered. Indicate any ideas in which you think you need further training.)

TRAINEE'S SIGNATURE:_____ **DATE:** _____

APPENDIX C Sample Training Objectives and Measurements

Objective	Measurement
Improve Work Habits	Compare attitudes before and after training to determine improvements in such actions as absenteeism or disciplinary actions.
Improve Quality of Work	Compare work produced before and after training to determine improvements.
Decrease Developmental or	Compare time required for new employees Supervisory Time participating in a planned training program to reach an acceptable level of performance to those who did not participate.
Improve Service to Customers	Compare customer satisfaction before and after training (surveys or other customer feedback).

APPENDIX D Sample SF-182 and Procedures

Section A - TRAINEE INFORMATION

Item 1 - After filling in the trainee's full name, enter the first five letters of the last name in the area indicated.

Item 2 - Use 9 digits for the Social Security Number.

Item 3 - Enter year and month of birth (e.g., if the trainee's birth date is January 14, 1943, it would appear as 43/01).

Items 4-8 - Self-explanatory.

Items 9-10 - To be filled in by the Training Office.

Item 11a. - Self-explanatory.

Item 11b. - If the trainee is disabled or handicapped and in need of special arrangements (Brailling, taping, interpreters, facility accessibility, etc.), describe the special arrangements on a separate sheet and submit to the Training Office. NOTE: The trainee is not required to furnish this information. His/her signature on the descriptive sheet indicates agreement to release it to training vendors.

Item 12 - Self-explanatory.

Items 13-14 - To be filled in by the Training Office.

Section B - TRAINING COURSE DATA

Items 15-17 - Self-explanatory.

Item 18 - Enter the year, month, and day the course begins and ends (e.g., a course starting June 15, 1973, and ending December 15, 1973, would be entered as 73/06/15 and 73/12/15).

Item 19 - The number of course hours can be determined by multiplying the number of hours attended per week by the number of weeks of the course or semester.

Item 20 - Select an appropriate code for each item listed below and enter in code boxes on form.

A. PURPOSE

1 Mission or program change
2 New technology
3 New work assignment
4 Improve present performance
5 Meet future staffing needs
6 Develop unavailable skills
7 Trade or craft apprenticeship
8 Orientation
9 Adult basic education

B. TYPE

1 Executive and Mangement
2 Supervisory
3 Legal, Medical, Scientific, or Engineering
4 Administration and analysis
5 Specialty and Technical
6 Clerical
7 Trade or craft
8 Orientation
9 Adult basic education

C. SOURCE

1 Government - Agency
2 Government - Interagency
3 Non-government - Designed for agency
4 Non-government - Off shelf
5 State or local government

D. SPECIAL INTEREST

0 No special program
1 Executive development
2 Supervision

Section C - ESTIMATED COSTS AND BILLING INFORMATION

Items 21-22 - Complete each item for direct and indirect costs. Include the employee's organization code and the training purpose code in the block indicated for Appropriation/fund. Training purpose codes are as follows:

Training/Tuition	Code
Skills Development (Program/Management/Administrative/ADP/etc.)	259P
Conference/Seminar (ALRA/FDR/SFLRP/SPIDR/etc.)	259R
Other Training (Retirement/Employee Programs/etc.)	259S

Item 23 - Enter Document/Purchase Order/Requisition Number for reimbursement of training costs to responsible Training Vendor. This number is to be referenced on the billing document.

Item 24 - Fill in 8-digit station symbol of the nominating agency finance office which will report the payment on SF-224, Statement of Transactions.

Item 25 - Enter name and mailing address of the Budget and Finance Division for billing purposes.

Section D - APPROVALS

Items 26-27 - To be completed by the trainee's immediate and/or second-line supervisor(s) before submission to the Training Office.

Item 28 - To be completed by the Training Office.

Section E - APPROVAL/CONCURRENCE

Item 29 - To be completed by the Training Office.

Section F - CERTIFICATION OF TRAINING COMPLETION

Item 30 - To be completed by the Training Office.

REQUEST, AUTHORIZATION, AGREEMENT AND CERTIFICATION OF TRAINING

A. Agency code, agency subelement and submitting office number (*Example - xx-xx-xxxx*) 01

B. OFFICE USE ONLY

C. Request status *(Mark (X) one)* 02

Initial or Resubmission	Correction or Cancellation
X	

Section A -- TRAINEE INFORMATION

1. Applicant's name *(Last - First - Middle Initial)* 03
DOYLE, JOHN L.

Enter first 5 letters of last name
DOYLE

2. Social Security Number 04
222-33-4444

3. Date of Birth *(Year and month)* 05
79/03
(Example -- born January 14, 1943 shown as 43/01)

4. Home address *(Number, street, city, State, ZIP code)*
888 Sunset Blvd
Washington, D.C. 60606

5. Home Telephone
Area code 202 Number 555-5555

6. Position level *(Mark (X) one only)*

a. Non-supervisory	c. Manager
X	
b. Supervisory	d. Executive

7. Organization mailing address *(Branch-Division/Office/Bureau/Agency)*
Federal Labor Relations Authority/OGC
607 14th Street, NW
Washington, D. C. 20424

8. Office telephone
Area code 202 Number 482-6601 Extension 222

9. Continuous civilian service
Years 10 Months 3

10. Number of prior non-government training days
3

Title/Function
Legal Assistant

11b. Applicant handicapped or disabled *(See instructions)*

12. Pay plan/series/grade/step
GS-986-07

13. Type of appointment
Career

14. Education level
13

11a. Position

Section B -- TRAINING COURSE DATA

15a. Name and mailing address of training vendor *(Name, street, city, State, ZIP code)*
USDA Graduate School, 600 Maryland Ave.
Washington, D.C. 20024

15b. Location of training site *(If same, mark box)*
X

16. Course title and training objectives *(Benefits to be derived by the Government)*
Quattro Pro for Windows 95 Introduction to program

17. Catalog/Course No.

18. Training period *(6 digits)* 06
Year 98 Month 10 Day 23

19. No. of course hours *(4 digits)* 07
0008

20. Training codes *(See instructions)*
Code 2 Code 2

	Year	Month	Day							
a. During duty	98	10	23	0008	2		2			a. Start
b. Non-duty										
	a. Purpose			08	c. Source		10			
b. Complete	c. TOTAL			b. Type		09	d. Special interest		11	
					5		0			

AGENCY USE ONLY

Section C -- ESTIMATED COSTS AND BILLING INFORMATION

21. Direct costs and appropriation/fund chargeable

Item	Amount Dollars	Amount Cents	Appropriation/fund
a. Tuition	$		5480100-3200 259P
b. Books or materials			
(Specify)			
d. (Enter 4 digits in dollar column) 12	210	00	
TOTAL	$		

22. Indirect costs and appropriation/fund chargeable

Item	Amount Dollars	Amount Cents	Appropriation/fund
a. Travel	$		
b. Per diem			
(Specify)			
d. (Enter 4 digits in dollar column) 13			
TOTAL	$		

23. Document/Purchase Order/Requisition No.
54 000001

24. 8-Digit station symbol
(See Table 2-2 in TFM)
Federal Labor Relations Authority
Budget & Finance Division

25. BILLING INSTRUCTIONS *(If other than Item 24)*:
607 14th Street, NW, Suite 430
Washington, D.C. 20424-0001

Section D -- APPROVALS

26a. Immediate supervisor -- *Name and title*
John Smith
Director

Area code/Tel. No./Extension
(202) 482-6601 X291

b. Signature

Date

27a. Second-line supervisor -- *Name and title*
Lucy Johns
Assistant Director

Area code/Tel. No./Extension
(202) 482-6601 X299

b. Signature

Date

28a. Training officer -- *Name and title*
Jane Doe
Training Coordinator

Area code/Tel. No./Extension
(202) 482-6690 X491

b. Signature

Date

Section E -- APPROVAL/CONCURRENCE

29a. Authorizing official -- *Name and title*
Robert Ward
Training Officer

Area code/Tel. No./Extension
(202) 482-6690 X499

b. Signature

Approved

Disapproved

Date

Section F -- CERTIFICATION OF TRAINING COMPLETION

30a. Certifying official -- *Name and title*
Robert Ward
Training Officer

Area code/Tel. No./Extension
(202) 482-6690 X499

b. Signature

Date

FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION
FLRA No. 3317.2

EXECUTIVE RESOURCES BOARD

Issue Date: January 20, 2015

Contents

0101. POLICY and PURPOSE

101.1 General.
Each agency is statutorily required to establish one or more Executive Resources Boards (ERB) to conduct the merit staffing process for career entry into the Senior Executive Service (SES) by 5 U.S.C. § 3393(b).

101.2 Purpose.
This policy instruction implements within the Federal Labor Relations Authority (FLRA) the statutory requirement(s) of 5 U.S.C. § 3393(b).

101.3 Cancellation.
This policy instruction cancels and supersedes the Executive Resources Board Directive (FLRA No. 3317.1, dated February 9, 2004).

0102. RESPONSIBILITIES

102.1 FLRA Chairman.
The FLRA Chairman shall:

- appoint the members of the ERB "from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency;" (*See* 5 U.S.C. § 3393(b)) and
- designate one member of the Board to serve as ERB Chairman.

The FLRA Chairman may:

- establish a specific term of service for ERB members and the ERB Chairman; and
- delegate to the ERB additional functions and authorities beyond the mandatory responsibilities in 5 U.S.C. § 3393(b) and 5 C.F.R. § 412.302, as the Chairman deems appropriate.

102.2 Executive Director.

The Executive Director shall establish and distribute agency-wide policy instructions for the FLRA and shall update such policy instructions, from time to time, as appropriate.

102.3 ERB Members.

ERB members are statutorily required to conduct the merit staffing process for career appointments in the SES, by:

- reviewing the executive qualifications of each candidate for a position to be filled by a career appointee (5 U.S.C. § 3393(b)(1));
- making written recommendations to the appropriate appointing authority concerning such candidates (5 U.S.C. § 3393(b)(2));
- approving development plans for each candidate participating in the agency's SES candidate development program, should such a program exist within the agency. (5 C.F.R. § 412.302).

102.4 ERB Chairman.

The ERB Chairman shall:

- oversee activities of the ERB, including, but not necessarily limited to the following: convene ERB meetings; establish the ERB agenda; serve as ERB point of contact with the appointing authority, Office of Personnel Management, FLRA Human Resources, and others, as appropriate; seek technical and or legal advice and guidance, as necessary, including the use of external review boards for initial rating and ranking of applications; oversee maintenance of ERB agency records, as appropriate;
- certify ERB merit staffing actions;
- oversee additional duties or functions as the FLRA Chairman may assign to the ERB; and
- obtain dedicated administrative assistance through the FLRA Human Resources Division, as needed.

0103. OPERATION OF THE ERB.

103.1 A quorum is required for ERB action. A quorum means the ERB Chairman plus two other ERB members.

103.2 Consensus shall be the preferred decision-making process; however, in the absence of consensus, the ERB Chairman shall call for majority vote.

103.3 The ERB may establish such procedures as necessary to carry out its functions.

0104. EFFECTIVE DATE.

The policies addressed in this Instruction are effective immediately and replace any prior or conflicting FLRA policies dealing with this topic.

0105. REFERENCES.

a. 5 USC § 3393(b)
b. 5 CFR § 317.501(a)
c. 5 CFR § 412.302

January 20, 2015

Sarah Whittle Spooner
Executive Director

Date

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 2301.1

SUBJECT: FINANCIAL MANAGEMENT SYSTEMS

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FEDERAL LABOR RELATIONS AUTHORITY **REGULATIONS**

OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

FLRA 2301.1

06/02/88
Recertified 2/15/00

SUBJECT: FINANCIAL MANAGEMENT SYSTEMS

4. Purpose. This regulation prescribes the policies, procedures and guidance necessary for sound financial management within the FLRA.

5. Scope. This regulation applies to all activities of the Federal Labor Relations Authority.

6. References.

   a. Federal Manager's Financial Integrity Act of 1982.

   b. Budget and Accounting Procedures Act of 1950.

   c. Congressional Budget and Impoundment Control Act of 1974.

   d. Office of Management and Budget (OMB) Circular, No. A-127, Financial Management Systems.

   e. OMB Circular, No. A-123, Internal Control Systems.

   f. OMB Circular No. A-71, Responsibilities for the Administration and Management of Automatic Data Processing Facilities.

   g. FLRA Regulation 2520.1B, Administrative Control of Funds.

   h. FLRA Regulation 2780.1A, The Use and Maintenance of Imprest Funds.

DISTRIBUTION: OC, OM, OMM, OE, FSIP, OGC, XD, OPI: OA, OGC, SOL, ALJ, OA, OA/B, OA/F, OA/P, IRRS

4. Definitions.

a. Financial Management Information - all information on Federal spending, collections, asserts, liabilities, equity, and related budgetary transactions and balances. This also includes data used to develop information for decisionmaking regarding unit costs, average pay rates, user charges, etc.

b. Accounting System - the system used for recording, classifying, and summarizing information on financial position and operations.

c. Financial Management System - the total of agency financial systems, both manual and automated, for planning, budget formulation and execution, program and administrative accounting, and audit; as well as all other systems for recording and classifying financial data and reporting financial management information, including purchasing, property, inventory, etc.

5. Policy. The FLRA will:

a. Ensure that agency financial management systems are in compliance will applicable laws and regulations, appropriate budgetary accounting principles and standards, Department of the Treasury reporting requirements and sound financial management practices;

b. Ensure that the FLRA maintains a single, integrated financial management system; and

c. Ensure that the system developed and operated is the source for financial information, and is used in the budget, Treasury financial statements, financial reports to Congress and other financial reports.

6. Responsibilities.

a. The Chairman, FLRA, is responsible for: establishing and properly maintaining the Agency’s financial management systems; ensuring the Agency’s financial

management system operates in accordance with applicable law and regulation; and annually reporting to the President and the Congress that the accounting system complies with the principles and standards developed by the Comptroller General and implemented through OMB guidelines.

b. The Executive Director, FLRA, is responsible for monitoring the activities of the Agency's financial management officials listed in c, d, and e, and implementing the Chairman's direction.

c. The Director of Administration is responsible for directing the review, improvement and reporting of FLRA financial systems in accordance with applicable laws and regulations.

d. The Chief of the Financial Management Division is responsible for the FLRA's accounting, payroll, voucher examination and cash management functions.

e. The Chief of the Budget and Administrative Services Division is responsible for the FLRA's budgetary information functions.

7. Financial Management Systems Objectives. The following objectives will allow the Agency to comply with applicable law, regulations and guidance from the Office of Management and Budget, the General Accounting Office, the Department of the Treasury, and be responsive to Agency needs.

a. Systems Operations. The system shall use the best of reasonably priced, contemporary technology to provide:

(1) Financial management data which will be gathered and processed only where necessary to meet internal management needs or external requirements.

(2) Recordation of financial management data as soon as practicable after occurrence of the event. Issuance of relevant data is made available to managers on a timely basis and final corrected data is accomplished in time to meet external reporting requirements.

(3) Reliable and complete financial management information which is verifiable and is ordinarily drawn from official records and systems, and shall be no more detailed than necessary to meet the needs of management and external requirements.

(4) Financial management data which are recorded and reported the same throughout the Agency. Accounting shall be synchronized with budgeting. Consistency over time shall be maintained. New and revised systems shall adopt common, existing definitions and classifications.

(5) An Agency financial management system that is designed and operated with reasonable total costs and transaction costs, in accordance with OMB guidelines. Financial systems which are excessive in cost shall be identified and phased out.

b. Systems Integrity. The Financial Management System shall feature reasonable controls designed, operated, and evaluated in accordance with OMB Circular A-123, Internal Control Systems and OMB Circular A-71, Responsibilities for the Administration and Management of Automatic Data Processing Facilities.

c. Support for Budgets. Financial management data shall be recorded, stored, and reported to facilitate budget preparation, analysis, and execution. Data shall be classified uniformly and that classification, at a minimum, shall be at a level of detail that directly supports execution of enacted budgets.

Presidential and Congressional decisions shall be recorded precisely, and financial management data on results shall be classified to track such decisions. This includes detailed support for reports to OMB under Circulars A-34, Budget Execution, and A-11, Presentation and Submission of Budget Estimates. Data required for budget and management decisionmaking on unit costs and performance shall be included in the system.

d. Support for Management. Data shall be recorded and reported in a manner to facilitate carrying out the responsibilities of both program and administrative managers.

e. Full Financial Disclosure. Financial management data shall be recorded, and reported as specifically required by OMB or the Department of the Treasury, to provide full financial disclosure and accountability in accordance with appropriate budget and accounting principles and standards.

8. System Inventory and Assignment of Responsibility. The FLRA has an integrated financial management system composed of six major components, each with a number of subsystems. Overall responsibility for the management of the Financial Management Systems for the FLRA is assigned to the Director of Administration. Listed below are each major component and the positions responsible for management of each component of the financial management system:

Chief, Budget & Administrative Services Division	Budget
Chief, Financial Management Division	Accounting
Chief, Financial Management Division	Travel
Chief, Financial Management Division	Payroll
Chief, Budget & Administrative Services Division	Procurement Management
Chief, Budget & Administrative Services Division	Property Management

9. Annual Systems Review. An annual review of the Financial Management Systems will be conducted by the Executive Director, the Director of Administration, each component manager of the FLRA financial system and such system users as selected by the Executive Director. The review

will be conducted in accordance with OMB's review guide "Guidelines for Evaluating, Improving and Reporting upon Financial Management/Accounting Systems" and will build upon reviews required by OMB Circular A-123. In addition, on an annual basis the FLRA will conduct a audit through the use of an independent contractor.

One result of the sytem review will be a documented management assessment of how well overall the system and each of its components conform to the objectives stated above and in OMB Circular A-127.

A more detailed evaluation of the systems shall be conducted on a cyclical basis. The results of the systems review shall then be used as a basis for the financial management system plan required under Section 7c, OMB Circular A-127, to ensure that all deficiencies are addressed. As part of this review, failures to conform to objectives implementing appropriate accounting principles and standards shall be noted and included in reports on accounting systems required by Section 8, OMB Circular A-127.

10. Development and Maintenance of Financial Management Systems Plan. The Director of Administration shall develop a five-year plan for a more efficient financial management system. The plan shall be approved by the Chairman, FLRA, and accompany each year's budget and management submission to OMB. Materials submitted shall be adequate to support the development of an overall executive branch management report to Congress.

11. Reporting Requirements. As required by Section 4 of the Federal Managers Financial Integrity Act, the Chairman shall report to the President and Congress on whether the Agency's accounting system conforms to appropriate accounting principles and standards. Systems that conform to the provisions of OMB Circular A-127 shall be considered as meeting the requirement of the Act. These reports shall be made by December 31 of each year for the fiscal year ending September 30.

This regulation is effective June 2, 1988.

/s

Jacqueline R. Bradley
Executive Director

OFFICIAL SEAL AND FLAG OF THE FEDERAL LABOR RELATIONS AUTHORITY

INSTRUCTION FLRA 1010.1

1. GENERAL PROVISIONS

1. Purpose. Section 7105(b) of the Civil Service Reform Act of 1978 provides that the Federal Labor Relations Authority (FLRA) shall adopt an official seal which shall be judicially noticed. The FLRA was statutorily created on January 11, 1979, and in 1979 adopted its official Seal. The purpose of this Instruction is to describe the official Seal and the FLRA Flag which displays the Seal, and set forth appropriate uses of both.

1. References. 5 U.S.C. '7105(b); 18 U.S.C. '701; and 18 U.S.C. '1017.

3. Cancellation. This Instruction cancels FLRA Instruction No. 1010.1 dated October 18, 1982.

B. DESCRIPTION

1. Seal. The FLRA Seal is a shield consisting of a cogwheel, a gavel, a wrench, and a torch. On a dark blue shield there is a gold cogwheel, interlaced with a silver gavel, overall a silver torch with a scarlet and gold flame. The shield is blazoned on a white disc within a dark blue border with gold inner and outer rims inscribed at the top with UNITED STATES FEDERAL LABOR RELATIONS AUTHORITY in white letters. (Example attached)

   The cogwheel refers to the production of work and to progress in labor-management relations. The gavel symbolizes management and the wrench symbolizes labor, while the torch is for new ideas and leadership, thus representing the FLRA. Dark blue is the national color.

2. Flag. The FLRA Flag, which is red, has the FLRA Seal in its center, and has gold fringe around the border. FLRA flags for indoor display are 5' 6" x 4' 4" and for outdoor display are 5' x 9' 4" and shall be made of nylon. Printed miniature flags may be made for banquets, international activities, ceremonial purposes, and awards, as authorized by the FLRA Executive Director.

C. DISPLAY AND USE

1. The FLRA Seal and Flag are authorized for display, usually with the national flag, as property of the FLRA in:

   a. Reception/lobby areas, hearing/conference rooms, auditoriums in buildings in which FLRA activities are housed;

   b. Offices of the:

      Chair(man) and Members of the Authority, General Counsel, and Chair(man) of the Federal Service Impasses Panel;
      FLRA Executive Director;
      Chief Administrative Law Judge;
      Solicitor;
      Chief Counsels;
      Deputy General Counsel;
      Office of General Counsel, Director of Operations and Resources Management;
      Regional Directors;
      FSIP Executive Director; and

   1. Such others offices and locations as may be authorized by the FLRA Executive Director; the Office of General Counsel, Director of Operations and Resources Management; and the FSIP Executive Director.

   2. Normal use includes the authorized affixation of the Seal on documents and the reproduction on FLRA publications and property, including stationery and calling cards, and such other authorized uses coordinated by the FLRA Executive Director. A wall plaque of the Seal, produced in accordance with the specifications developed, is authorized for display as official property in FLRA offices.

4. REQUISITIONING

   FLRA components may obtain Seals and Flags through requisitions to the Office of the Executive Director, Administrative Services Division.

This Instruction is effective on _____, 2000.

_____
Solly Thomas
Executive Director, FLRA

Federal Labor Relations Authority

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION
FLRA Instruction 3431.3

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE MANAGEMENT SYSTEM	Issue Date: 04/16/2012

1. System Coverage

The Federal Labor Relations Authority (FLRA) (hereafter referred to as the agency) Senior Executive Service (SES) performance management system applies to all career, noncareer, limited term and limited emergency FLRA senior executives covered by subchapter II of chapter 43 of title 5, United States Code.

2. Definitions

- *Appointing authority* means the agency head or designee with authority to make appointments in the Senior Executive Service.
- *Appraisal period* means the established period of time for which a senior executive's performance will be appraised and rated.
- *Balanced measures* means an approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.
- *Critical element* means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.
- *Performance* means the accomplishment of the work described in the senior executive's performance plan.
- *Performance appraisal* means the review and evaluation of a senior executive's performance against performance elements and requirements.
- *Performance management system* means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.
- *Performance requirement* means a statement of the performance expected for a critical element.
- *Progress review* means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.
- *Ratings:*
  - *Initial summary rating* means an overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.
  - *Annual summary rating* means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.
- *Senior executive performance plan* means the written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements established for the senior executive.

- *Strategic planning initiatives* means agency strategic plans, annual performance plans, organizational work plans, and other related initiatives.

3. **Appraisal Period**

- **Appraisal Period.** Executives must be appraised at least annually on their performance and an annual summary rating must be assigned for the relevant period of performance of each year (e.g., October 1 through September 30). FLRA's current appraisal period is July 1 through June 30 of each year.
- **Minimum Period.** The minimum period of performance that must be completed before a performance rating can be given is 90 days.
- **Adjusting Appraisal Period.** The agency may end an appraisal period at any time after the minimum **appraisal period** is completed, if there is an adequate basis on which to appraise and rate the senior executive(s).
- **Transition Period.** The agency may not appraise and rate any career executive within 120 days after the beginning of a new Presidential administration.

4. **Summary Performance Levels**
   - The system includes five summary performance levels:
     - Level 5 (Outstanding)
     - Level 4 (Exceeds Fully Successful)
     - Level 3 (Fully Successful)
     - Level 2 (Minimally Satisfactory)
     - Level 1 (Unsatisfactory)

5. ***Planning Performance*: Critical Elements**
   - Supervisors must establish performance plans for senior executives in consultation with the senior executives and communicate the plans to them on or before the beginning of the rating period. Each senior executive performance plan shall include, as a minimum, the following critical elements and performance requirements:
     - **Leading Change**
       Develops and implements an organizational vision that integrates key organizational and program goals, priorities, values, and other factors. Assesses and adjusts to changing situations, implementing innovative solutions to make organizational improvements, ranging from incremental improvements to major shifts in direction or approach, as appropriate. Balances change and continuity; continually strives to improve service and program performance; creates a work environment that encourages creative thinking, collaboration, and transparency; and maintains program focus, even under adversity.

     - **Leading People**
       Designs and implements strategies that maximize employee potential, connect the organization horizontally and vertically, and foster high ethical standards in meeting the organization's vision, mission, and goals. Provides an inclusive workplace that fosters the development of others to their full potential; allows for full participation by all employees; facilitates collaboration, cooperation, and teamwork, and supports constructive resolution of conflicts. Ensures employee performance plans are aligned with the organization's mission and goals, that employees receive constructive feedback, and that employees are realistically appraised against clearly defined and communicated performance standards. Holds employees accountable for appropriate levels of performance and conduct. Seeks and considers employee input. Recruits, retains, and develops the talent needed to achieve a high quality, diverse workforce that reflects the nation, with the skills needed to accomplish organizational performance objectives while supporting workforce diversity, workplace inclusion, and equal employment policies and programs.

- **Business Acumen**
  Assesses, analyzes, acquires, and administers human, financial, material, and information resources in a manner that instills public trust and accomplishes the organization's mission. Uses technology to enhance processes and decision making. Executes the operating budget; prepares budget requests with justifications; and manages resources.

- **Building Coalitions**
  Solicits and considers feedback from internal and external stakeholders or customers. Coordinates with appropriate parties to maximize input from the widest range of appropriate stakeholders to facilitate an open exchange of opinion from diverse groups and strengthen internal and external support. Explains, advocates, and expresses facts and ideas in a convincing manner and negotiates with individuals and groups internally and externally, as appropriate. Develops a professional network with other organizations and identifies the internal and external politics that affect the work of the organization.

- **Results Driven**
  This critical element includes specific performance results expected from the executive during the appraisal period, focusing on measurable outcomes from the strategic plan or other measurable outputs and outcomes clearly aligned to organizational goals and objectives. At a minimum, the performance plan will include performance requirements (including measures, targets, timelines, or quality descriptors, as appropriate) describing the range of performance at Level 3 for each result specified. It is recommended to also establish the threshold measures/targets for Levels 5 and 2.

  The Results-Driven critical element must also identify clear, transparent alignment to relevant agency or organizational goals/objectives, page numbers, from the Strategic Plan, Congressional Budget Justification/Annual Performance Plan, or other organizational planning document in the designated section for each performance result specified.

- Executive performance plans must include the Governmentwide SES performance requirements as written and may include additional agency-specific performance requirements written as competencies or specific results/commitments associated with the element.

- Senior executive performance plans must include additional, specific performance requirements for each objective listed under the Results-Driven element. Performance requirements for the Results Driven element must include measures, targets, and timelines.

- The performance requirements in the executive performance plan describe performance at the fully successful level, as established in the Fully Successful performance standard contained in section 6 of this document. FLRA Component heads can annually require/permit additional levels of performance requirements.

- Each critical element must be assigned a weight value, with the total weights adding to 100 points.
  - The minimum weight that can be assigned to the Results Driven critical element is 20 percent.
  - The minimum weight that can be assigned to the other four critical elements is 5 percent.
  - No single performance element can be assigned a greater weight than the Results Driven element.
  - No standard weighting scheme is established; however, established weights should be consistent across similar occupations (i.e, Chief Counsel, Regional Director) and must support achievement in FLRA's agency-wide strategic goals and objectives.
  - Weighted critical elements indicate the relative importance within the executive's scope of responsibilities, and are used to derive the initial and annual summary ratings.

- Weights for each element should reflect the significance of that task/program/project within the framework of the goals to be achieved, not the percentage of time an employee spends working on that element.

- The gaining organization must set performance goals and requirements for any detail or temporary assignment of 120 days or longer and appraise the performance in writing. The executive's rating official will factor this appraisal into the initial summary rating.

6. ***Planning Performance*: Performance Standards for Critical Elements**
The performance standard for each critical element is specified below.

- **Level 5:** The executive demonstrates exceptional performance, fostering a climate that sustains excellence and optimizes results in the executive's organization, agency, department or government-wide. This represents the highest level of executive performance, as evidenced by the extraordinary impact on the achievement of the organization's mission. The executive is an inspirational leader and is considered a role model by agency leadership, peers, and employees. The executive continually contributes materially to or spearheads agency efforts that address or accomplish important agency goals, consistently achieves expectations at the highest level of quality possible, and consistently handles challenges, exceeds targets, and completes assignments ahead of schedule at every step along the way. Performance may be demonstrated in such ways as the following examples:

  - Overcomes unanticipated barriers or intractable problems by developing creative solutions that address program concerns that could adversely affect the organization, agency, or Government.
  - Through leadership by example, creates a work environment that fosters creative thinking and innovation; fosters core process re-engineering; and accomplishment of established organizational performance targets.
  - Takes the initiative to identify new opportunities for program and policy development and implementation or seeks more opportunities to contribute to optimizing results; takes calculated risks to accomplish organizational objectives.
  - Accomplishes objectives even under demands and time pressure beyond those typically found in the executive environment.
  - Achieves results of significant value to the organization, agency, or Government.
  - Achieves significant efficiencies or cost-savings in program delivery or in daily operational costs of the organization.

- **Level 4:** The executive demonstrates a very high level of performance beyond that required for successful performance in the executive's position and scope of responsibilities. The executive is a proven, highly effective leader who builds trust and instills confidence in agency leadership, peers, and employees. The executive consistently exceeds established performance expectations, timelines, or targets, as applicable. Performance may be demonstrated in such ways as the following:
  - Advances progress significantly toward achieving one or more strategic goals.
  - Demonstrates unusual resourcefulness in dealing with program operations or policy challenges.
  - Achieves unexpected results that advance the goals and objectives of the organization, agency, or Government.

- **Level 3:** The executive demonstrates the high level of performance expected and the executive's actions and leadership contribute positively toward the achievement of strategic goals and meaningful results. The executive is an effective, solid, and dependable leader who delivers high-quality results based on measures of quality, quantity, efficiency, and/or effectiveness within agreed upon timelines. The executive meets and often exceeds challenging performance expectations established for the position. Performance may be demonstrated in such ways as the following:
  - Seizes opportunities to address issues and effects change when needed.

- Finds solutions to serious problems and champions their adoption.
- Designs strategies leading to improvements.

- **Level 2:** The executive's contributions to the organization are acceptable in the short term but do not appreciably advance the organization towards achievement of its goals and objectives. While the executive generally meets established performance expectations, timelines and targets, there are occasional lapses that impair operations and/or cause concern from management. While showing basic ability to accomplish work through others, the executive may demonstrate limited ability to inspire subordinates to give their best efforts or to marshal those efforts effectively to address problems characteristic of the organization and its work.

- **Level 1:** In repeated instances, the executive demonstrates performance deficiencies that detract from mission goals and objectives. The executive generally is viewed as ineffectual by agency leadership, peers, or employees. The executive does not meet established performance expectations/timelines/targets and fails to produce – or produces unacceptable – work products, services, or outcomes.

7. ***Monitoring*** **Performance**
   - **Monitor and Provide Feedback.** A supervisor must monitor senior executive performance in accomplishing elements and requirements and provide feedback, including advice and assistance on improving performance, when needed, and encouragement and positive reinforcement, as appropriate.
   - **Progress Review.** Each senior executive must receive at least one progress review during the appraisal period. At a minimum the executive must be informed how well he or she is performing against performance requirements.

8. ***Rating*** **Critical Elements**

Each element under which the executive has performed for at least 90 days must be rated. Appraisal narratives should highlight overall performance results, outputs, outcomes, and impact.

To determine the rating level for the Results Driven element, each individual performance objective/commitment will be rated against the performance standard definitions in Section 6 above, and any other defined performance indicators, measures, or standards for that particular performance objective/commitment.

Rating officials may use either a numeric or narrative rating formula to derive the performance level for the Results Driven element. At the start of each appraisal period, and as a part of the consultative process with the executive, the Rating Official must determine which Results Driven element derivation rating formula will be used to determine the overall Results Driven performance level. The Rating Official will document the applicable Results Driven element derivation formula in part 8 of the executive's performance plan.

For the numeric derivation method:

- The weight assigned to the Results Driven element is distributed evenly across the performance requirements, unless otherwise specified in the performance plan. For example, if the Results Driven element is weighted at 50% and it has 5 performance requirements, each performance requirement under the Results Driven element could be weighted at 20% for a total of 100%. The overall performance level for the Results Driven element is determined by the same derivation formula used to determine the summary rating (outlined in Section 9).

For the narrative derivation method:

- **Outstanding:** All performance requirements for the Results Driven element are rated Outstanding.
- **Exceeds Fully Successful:** A majority of the performance requirements for the Results Driven element are rated at least Exceeds, with none below Fully Successful.
- **Fully Successful:** A majority of the performance requirements for the Results Driven element are rated at Fully Successful, with none below Fully Successful.

- **Minimally Satisfactory:** One or more performance requirements for the Results Driven element are rated at Minimally Satisfactory.
- **Unsatisfactory:** One or more performance requirements for the Results Driven element are rated at Unsatisfactory.

9. **Deriving the Summary *Rating***

- **Critical Element Point Values.** Once the rating for each critical element is determined, the following point values will be assigned to the element ratings:
  - Level 5 = 5 points
  - Level 4 = 4 points
  - Level 3 = 3 points
  - Level 2 = 2 points
  - Level 1 = 0 points
- **Derivation Formula.** The derivation formula is calculated as follows:
  - If any critical element is rated Level 1 (Unsatisfactory), the overall summary rating is Unsatisfactory. If no critical element is rated Level 1 (Unsatisfactory), continue to the next step.
  - For each critical element, multiply the point value of the element rating by the weight assigned to that element.
  - Add the results from the previous step for each of the five critical elements to come to a total score.
  - Assign the initial summary rating using the ranges below:
    - 475-500 = Level 5
    - 400-474 = Level 4
    - 300-399 = Level 3
    - 200-299 = Level 2
    - Any critical element rated Level 1 = Level 1
  - Example, with the initial summary rating determined to be Level 4 (Exceeds Fully Successful):

Critical Element	Rating Level Initial Element Score	Weight	Score Initial Point Score	Summary Level Range
1. Leading Change	4	15	4 x 15 = 60	475-500 = Level 5 400-474 = Level 4 300-399 = Level 3 200-299 = Level 2 Any CE rated Level 1 = Level 1
2. Leading People	5	15	5 x 15 = 75	
3. Business Acumen	3	15	3 x 15 = 45	
4. Building Coalitions	4	15	4 x 15 = 60	
5. Results Driven	4	40	4 x 40 = 160	
Total		100%	400	

- **Initial Rating.** The rating official will develop an initial summary rating, in writing, and share the initial rating with the senior executive.
- **Opportunity for Written Response.** A senior executive may respond in writing to the initial appraisal.
- **Opportunity for Higher Level Review.** The senior executive is entitled upon request to have the initial rating reviewed by a higher level official before that rating is presented to the PRB. The higher level reviewer may not change the initial rating but may recommend a different rating to the PRB and the appointing authority. In instances where there is no official available to provide a higher level review of the initial rating, the initial and summary ratings will be given by the same official; however, there still must be PRB action between the initial and annual summary ratings.
- **Forced Distribution.** A forced distribution of rating levels is prohibited.

- **Job Changes or Transfers.** When a senior executive who has completed the minimum appraisal period changes jobs or transfers to another agency, the supervisor must appraise the executive's performance in writing before the executive leaves and the appraisal will be forwarded to the gaining agency.
- **Transferred Ratings.** When developing an initial summary rating for an executive who transfers from another agency, a supervisor must consider any applicable ratings and appraisals of the executive's performance received from the former agency.
- **Extending the Appraisal Period.** If the agency cannot prepare an executive's rating at the end of the rating period because the executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's rating period and will then prepare the annual summary rating.
- **Authority for Rating.** The annual summary rating must be assigned by the appointing authority (and may not be delegated to an official who does not have authority to make SES appointments) only after considering the recommendations of the Performance Review Board.

10. Performance Review Boards (PRBs)

- **PRB.** The agency shall establish one or more PRBs to make written recommendations on annual summary ratings to the appointing authority on the performance of senior executives and has appointed members in accordance with 5 CFR 430.310.
- **Membership Number.** Each PRB must have 3 or more members selected by the agency head or designee(s) in a manner that ensures consistency, stability, and objectivity in SES performance appraisal. PRB appointments must be published in the Federal Register before service begins.
- **Career Membership.** More than one-half of the PRB's members must be career appointees when considering a career appointee's appraisal or performance award. PRB members may not be involved in deliberations involving their own appraisals.
- **Review Ratings.** The PRB must review and evaluate the initial appraisal and summary rating, the senior executive's response and any recommendation by a higher-level reviewer, and conduct any additional review necessary to make written recommendations to the appointing authority on annual summary ratings, bonuses and (as applicable) pay adjustments for each senior executive.
- **Executive Response.** The PRB must not be provided a proposed initial summary rating to which the executive has not been given the opportunity to respond in writing.
- **Agency/Organizational Performance.** The PRB must be provided and take into account appropriate assessments of the agency/organization's performance when making recommendations.

11. Dealing with Poor Performance

- **Performance Actions.** The agency must: 1) reassign, transfer or remove from the Senior Executive Service a senior executive who has been assigned a Level 1 (Unsatisfactory) final rating; 2) remove from the Senior Executive Service an executive who has been assigned two final ratings at less than Level 3 (i.e., Level 2 or a combination of Levels 2 and 1) within a three year period; and 3) remove from the Senior Executive Service an executive who receives two Level 1 (Unsatisfactory) final ratings within five years. Non-probationary career appointees are removed under procedures in 5 CFR 359 subpart E. Probationary career appointees are removed under procedures in 5 CFR 359 subpart D. (Nothing here shall be interpreted to limit removal of probationary SES employees as permitted by current regulations.) Guaranteed placement in a non-SES position will be provided under 5 CFR 359 subpart G when applicable.
- **Appeal Rights.** Senior executive performance appraisals and ratings may not be appealed. The executive may file a complaint about any aspect of the rating process the executive believes to involve unlawful discrimination (EEOC) or a prohibited personnel practice (Office of Special Counsel). A career appointee being removed from the SES under 5 U.S.C. 3592(a)(2) shall, at least 15 days

preceding the date of removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board.

12. Other System Requirements

- **Appraisal Results.** Results of performance appraisal will be used as a basis for adjusting pay, granting awards, determining training needs and making other personnel decisions.
- **Organizational Assessment and Guidelines.** The agency must assess organizational performance (overall and with respect to each of its particular missions, components, programs, policy areas, and support functions). The agency must also ensure its assessment results and evaluation guidelines based upon them are communicated by the agency head (or another official designated by the agency head) to senior employees, rating officials, higher level review officials and PRBs so that they may be considered in preparing performance appraisals, ratings and recommendations.
- **Oversight.** The agency head or the official designated by the agency head provides organizational assessments and evaluation guidelines and is responsible to oversee the system and to certify: 1) the appraisal process makes meaningful distinctions based on relative performance; 2) executive ratings take into account assessments of organizational performance; and 3) pay adjustments, awards and pay levels accurately reflect individual and organizational performance. The responsible official designated to provide evaluation guidelines and oversee the appraisal system must do so for the entire executive agency.
- **Performance Distinctions.** Rating officials and PRBs will make meaningful distinctions based on relative performance that take into account assessment of the agency's performance against relevant program performance measures.
- **Differences in Pay Based on Performance**. Senior executives who have demonstrated the highest levels of performance will receive the highest annual summary ratings and the largest corresponding pay adjustments, cash awards and levels of pay, and will be appropriately positioned in the pay range.

13. Training and Evaluation

- **Training.** The agency will provide information and training for executives on the requirements and operation of the agency's performance management and pay-for-performance system, including the results of the previous appraisal period.
- **Evaluation.** The agency will periodically evaluate the effectiveness of the performance management system(s) and implement improvements as needed.

14. Additional Agency-Specific Requirements
None.

This regulation is effective: April 16, 2012

Susan D. McCluskey
Chief Counsel to the Chairman
(Acting Chief Human Capital Officer)

Federal Labor Relations Authority

Washington, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION

FLRA No. 3430.3

GENERAL SCHEDULE PERFORMANCE MANAGEMENT SYSTEM	**Issue Date: October 1, 2012**

TABLE OF CONTENTS

101. General Provisions

101.1 Purpose

This Instruction prescribes the policies and procedures for the implementation and administration of the overall Performance Management Plan (PMP) for employees in the General Schedule at the Federal Labor Relations Authority (FLRA or the Agency). Performance management is the systematic process by which the Agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals through the integration of planning, monitoring, appraising, developing, and rewarding of individual and organizational performance. This PMP links the FLRA's strategic plan, component/office strategic and action plans, and employees' individual performance plans.

101.2 Cancellation

This Instruction cancels and supersedes FLRA Instruction 3430.2A dated November 10, 2011.

101.3 Scope

This Instruction applies to all General Schedule employees within the FLRA, except those whose employment is not reasonably expected to exceed 90 calendar days in a consecutive 12-month period.

101.4 References

A. Performance Appraisal — 5 U.S.C. chapter 43 and 5 C.F.R. part 430;

B. Performance-Based Reduction in Grade and Removal Actions — 5 C.F.R. part 432;

C. Superior Accomplishment Awards — 5 U.S.C. chapter 45 and 5 C.F.R. part 451, subpart A;

D. Within-Grade Increases — 5 U.S.C. 5335 and 5 C.F.R. part 531, subpart D;

E. Quality Step Increases — 5 U.S.C. 5336 and 5 C.F.R. part 531;

F. Reduction-In-Force — 5 U.S.C. 3502 and 5 C.F.R. 351.504; and

G. Records of Employee Performance — 5 U.S.C. 552a and 5 C.F.R. 293.404 and 293.405.

101.5 Definitions

A. **Acceptable Level of Competence.** Performance by an employee of the duties and responsibilities of his or her position that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in 5 C.F.R. part 531) of his or her position, subject to the

requirements of 5 CFR 531.404, as determined by the head of the agency or his or her designee.

B. **Appraisal.** The process under which performance is reviewed and evaluated.

C. **Appraisal Period.** The established period of time for which performance will be reviewed and a rating of record will be prepared. The appraisal period begins on July 1 and ends on June 30.

D. **Appraisal System.** A framework of policies and parameters established by an agency as defined at 5 U.S.C. 4301(1) for the administration of performance appraisal programs under subchapter I of chapter 43 of title 5, United States Code, and 5 C.F.R. part 430, subpart B.

E. **Approval Official.** The designated official at a higher management level than the Initial Rating Official who reviews and approves the Initial Rating Official's rating recommendation at the end of the appraisal period prior to presentation to the employee.

F. **Contribution.** Used in connection with On-the-Spot awards and Special Act or Service awards, it is an accomplishment achieved through an individual or group effort in the form of an invention, or a special act or service in the public interest connected with, or related to, official employment which contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork.

G. **Days.** Calendar days, unless otherwise specified.

H. **Element.** A component of a position sufficiently important to warrant appraisal. The elements may be either Critical, Non-critical, or Additional and are defined as follows:

1. Critical Element. A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such an element is used to measure performance only at the individual level.

2. Non-critical Element. A dimension or aspect of individual, team, or organizational performance, exclusive of a Critical Element, that is used in assigning a summary rating. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

3. Additional Element. A dimension or aspect of individual, team, or organizational performance that is not a Critical or Non-critical Element. Such elements are not used in assigning a summary rating but, like Critical and Non-critical Elements,

are useful for purposes such as communicating performance expectations and serving as the basis for granting awards. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

I. **Initial Rating Official.** The official, usually the immediate supervisor, who is responsible for developing performance plans, providing feedback and progress reviews, appraising employee performance, and recommending a performance rating.

J. **Minimum Appraisal Period.** The 90-day period during which an employee must have performed under the communicated performance elements and standards that may result in a performance rating.

K. **Performance Plan.** All written or otherwise recorded Critical, Non-critical, and Additional (if applicable) performance elements and standards that identify expected performance.

L. **Performance Rating.** The written or otherwise recorded appraisal of performance compared to the performance standard(s) for each Critical and Non-critical Element on which there has been an opportunity to perform for the minimum period. A performance rating shall include the assignment of a summary rating.

M. **Performance Standard.** The management approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

N. **Progress review.** An oral discussion between the supervisor and the employee about performance compared to the performance standards of Critical and Non-critical Elements. Progress reviews in the FLRA will be held, at a minimum, twice in the appraisal period.

O. **Quality Step Increase.** Synonymous with the term "step increase" used in section 5336 of title 5 U.S.C., and means an increase in an employee's rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade (as defined in 5 CFR 531.403) in accordance with section 5336 of title 5 U.S.C., and with section 4 of the Performance Management and Recognition System Termination Act of 1993 (P. L. 103-89), and with 5 C.F.R. part 531.

P. **Reviewing Official.** The supervisor of the Initial Rating Official, where one exists.

Q. **Rewards.** Awards including, but not limited to, employee incentives that are earned based on predetermined criteria such as productivity standards, performance goals, measurement systems, awards formulas, or payout schedules. Awards are detailed in

the FLRA instruction entitled "GS-Employee Awards and Recognition System," and are incorporated herein by reference.

R. **Special Performance Rating.** A written performance rating, including a summary narrative and a summary rating, that assesses an employee's performance during a detail or temporary promotion that lasts for at least 90 days or when an employee leaves one FLRA office for another after serving in the previous position for at least 90 days.

S. **Summary Rating.** The single rating, expressed as a level of performance, which is derived from the performance ratings assigned to each Critical and Non-critical Element. The summary rating represents the employee's overall performance during the period in which performance is reviewed and evaluated.

T. **Work plan.** A written document identifying how individual performance results will support organizational goals and objectives.

201. Planning Performance

201.1 Policies and Procedures

A. **General.** In accordance with its strategic planning initiative and government-wide laws, rules, and regulations, the FLRA's strategic plan identifies goals and objectives, as well as the Agency's plans to accomplish them during the coming year and in subsequent years. FLRA components should develop action plans to identify what each component will do in support of the Agency's goals and objectives. Where appropriate, action plans should be developed, as needed, to identify an office's goals and objectives in support of the Agency's and the component's goals and objectives. Individual work plans will be developed for each employee to identify how the employee's performance results will support the organizational goals and objectives. In setting goals, individual and organizational goals should be aligned with the Agency's goals.

The Agency's and the component's plans should be updated and revised annually, as necessary, followed by concomitant changes in an office's action plans and in individual work plans, as appropriate.

B. **Performance Plans.** Each employee must have a written, current performance plan. Performance plans consist of performance elements, performance standards, and a work plan. Performance plans may include professional skills expectations (such as analytical ability or communication skills); behaviorally-based expectations (such as relationships with other employees and with customers); and results-based expectations (such as organizational, group, and individual accomplishments related to Agency/component strategic plans).

1. A performance plan will be developed to measure performance requirements based on work assignments and responsibilities of each employee's position.

2. Solicitation of input from employees and employee representatives in the development and revision of performance plans is encouraged.

3. The official developing a performance plan may seek input from multiple sources, including customers, peers, and others involved in the supervision of the employee. Unless an employee is working more than one position (e.g., such as serving on a detail during the appraisal period), s/he will normally not have more than one supervisor.

4. Each plan must include all elements that will be used in assigning a summary rating.

5. Performance plans must contain at least one Critical Element that addresses individual performance.

6. Performance plans may include:

    a. Non-critical Elements that are used in deriving and assigning a summary rating.

    b. Additional Elements, which are not used in deriving and assigning a summary rating, but are used to support the purpose of the performance management processes described in General Provisions.

7. Performance plans must support organizational goals and objectives and be linked to overall program results.

8. Where appropriate, performance plans must include standards that address customer service/public and staff relations.

9. Performance standards are required to be written at the Fully Successful level, and the Exceeds Fully Successful and Minimally Satisfactory levels. Performance standards for bargaining unit positions will be written at all 5 performance levels.

10. Performance standards should be S.M.A.R.T. – specific, measurable, attainable, realistic, and timely. Performance standards should be expressed in terms that promote an understanding of how the employee's individual performance links to organizational and/or strategic goals. Performance standards should also include specific recurring and nonrecurring goals, and should incorporate relevant portions of FLRA's current Strategic Plan, directly or by reference. Accomplishment of organizational objectives should be reflected in performance plans when appropriate.

11. Standards must be applied in a fair and equitable manner, and to the maximum extent possible, permit appraisals based on objective criteria. They are not, however, intended to replace supervisory judgment. A standard should be

sufficiently precise and specific so as to invoke a general consensus as to the meaning and content; however, there is no requirement that standards contain numerical measures. Initial Rating Officials should also consider quality of work, efficiency, productivity, timeliness, and the accomplishment of goals as viable performance measures.

12. The appraisal process consists of assigning one performance achievement level for each Critical and Non-critical Element. Each element usually contains five performance standards. To meet the requirements of the Fully Successful achievement level, performance must meet or exceed each Fully Successful standard in that element. When a Critical Element is composed of components or sub-elements, employee must be informed of the level of performance needed for each component or sub-element for job retention. In other words, employees must be informed if unacceptable performance on a component or sub-element warrants an Unacceptable rating on the Critical Element as a whole. Performance plans may give added weight to some performance standards versus others. Management will make employees aware of weighting differences at the beginning of the appraisal period.

13. When an individual's performance plan needs to be changed during the appraisal period due to changes in work assignments, achievement of group or team objectives, or other circumstances that render standards inappropriate, the supervisor must encourage employee involvement in revising and/or redefining element(s) and standard(s) to the extent appropriate.

14. Initial Rating Officials ensure that each employee receives and signs a performance plan at the beginning of each appraisal period and in no case later than 30 days after the beginning of the appraisal period, appointment to a new position, or when a performance plan is changed.

15. When Agency, component, office, and/or team goals change, thus requiring changes to performance elements and/or standards, the changes in performance elements/standards will be communicated immediately to the employee who will have a minimum of 90 days to perform under the new elements/standards before the employee's performance will be measured against the standard.

16. Each Initial Rating Official will use the FLRA Performance Appraisal Form or its electronic equivalent for documenting the employee's approved performance plan, and after it is finalized, will give a paper copy to the employee.

301. Monitoring Performance

301.1 Policies and Procedures

A. The minimum appraisal period is 90 calendar days under a performance plan.

B. Performance on each Critical and Non-critical Element shall be appraised against its performance standard(s).

C. Each employee must receive and have documented at least two progress reviews during the appraisal period. Supervisors will conduct detailed discussions with the employee regarding each standard/element, Critical and Non-critical, with specific examples from the employee's work. This progress review will be documented on the FLRA Performance Appraisal Form or its electronic equivalent. Additional regular, informal communication about an employee's progress in meeting standards is strongly encouraged and should be conducted.

D. Supervisors of employees whose performance is Minimally Satisfactory in one or more Critical Elements will provide those employees with counseling and any other appropriate assistance geared to helping them raise their performance to the Fully Successful level. Supervisors and managers cannot take formal adverse action (e.g., reduction-in-grade and pay or removal) against an employee based on unacceptable performance before notifying the employee in writing of the deficiencies and providing an opportunity period to demonstrate performance improvement.

401. Appraising Performance

401.1 Policies and Procedures

A. The FLRA's Performance Management System establishes a performance feedback process ensuring meaningful communications by supervisors to employees during the performance period. The process includes ongoing communications regarding particular assignments and work products, at least two progress reviews, and a discussion at the end of the rating period concerning an employee's rating of record.

During these ongoing communications, employees will be given meaningful feedback to provide them with a basis for understanding areas for improvement and progress towards achieving the standards set forth in their performance plans. Progress reviews and end-of-year meetings will include a detailed discussion with the employee regarding each standard/element, Critical and Non-critical, with specific examples from the employee's work. Employees should actively participate in this process by submitting a self-assessment of their performance to their supervisor and engaging in these discussions by raising any concerns they have regarding the feedback being provided.

B. Employees will be appraised at the end of the appraisal period using the FLRA Performance Appraisal Form or its electronic equivalent.

C. Initial Rating Officials may consider feedback from multiple sources including customers, peers, or other appropriate sources and should consider improvements in efficiency, productivity, timeliness, quality of work service, and accomplishment of goals, as well as any other relevant information in appraising performance. Employees should remain aware of their accomplishments during the appraisal period and are encouraged to submit a voluntary self-assessment to the supervisor/Initial Rating Official.

D. Within 7 workdays after the conclusion of the appraisal period, employees should submit to the Initial Rating Official a self-assessment or other information related to their performance during the appraisal period. Such information should relate to the established performance plan. The Initial Rating Official will consider this information, if submitted, as well as other information relevant to the employee's performance that is available and will assign one achievement level for each element.

E. If an employee submits a self-assessment and the Initial Rating Official can verify its accuracy and completeness, the Initial Rating Official may use the self-assessment as the justification for an assigned rating. Otherwise, examples supporting the assigned rating will be documented in the portion of the FLRA Performance Appraisal Form provided for this purpose.

F. Employees should receive a written or otherwise recorded rating of record no later than 60 days following the end of the appraisal period.

G. Supervisors will meet with each employee to discuss his or her written performance appraisal after the conclusion of the appraisal period (appraisal meeting). Employees shall receive a copy of their written performance appraisals no less than twenty-four (24) hours – unless otherwise agreed to by the employee – prior to the appraisal meeting. During the appraisal meeting, or within 10 days following the meeting, employees have the opportunity to informally request changes to their appraisal.

H. An achievement level must be assigned for each Critical and Non-critical Element of the performance plan on which the employee has had a chance to perform. If an employee has not had an opportunity to perform any of the duties encompassed within a particular element, then the rating for that element should be "NR." The overall level of accomplishment for each Critical and Non-critical Element is measured against the pre-established performance standards. Achievement levels are defined as follows, and where applicable, specific benchmarks are set forth in a position's elements and standards:

    1. **Outstanding.** Performance at this level is characterized by extraordinary levels of achievement and commitment in terms of technical knowledge and skill, independence, and initiative. The employee performs a level of work that is of such exceptionally high quality that it exceeds to an exceptional degree the normal expectations of the position and the grade level, and results in significant

contributions to the organization and the completion of program goals and objectives.

2. **Exceeds Fully Successful.** A level of work that is of such high quality that it exceeds the normal expectations of the position and the grade level. The employee's job performance consistently exceeds expectations in critical areas and exhibits a sustained support of organizational and program goals and objectives.

3. **Fully Successful.** A level of work that fully, competently, and completely meets the normal expectations of the position and grade level. The employee's job performance demonstrates sound performance that meets organizational and program goals and objectives. In order for an employee to be rated Fully Successful on an individual element, his or her performance in all of the components or sub-elements must be Fully Successful.

4. **Minimally Satisfactory.** A level of work that generally meets, but at times fails to meet, the normal expectations of the position and grade level. Performance at this achievement level is typically deficient to a limit extent, e.g., the quality and/or quantity of work is not sufficient for grade level or the employee needs more than the expected level of supervision. This may be evidenced by the need for supervisory review, discussion, or correction greater than is necessary at the Fully Successful level to meet organizational and program goals and objectives.

5. **Unacceptable.** A level of work that does not meet the standards established for the Minimally Satisfactory level, demonstrating minimal contributions to organizational and program goals and objectives. A level of work that is of such poor quality that significant duties or responsibilities set forth in the Critical or Non-critical Element are not being adequately accomplished. Performance at this achievement level typically includes significant failures in work products or timeliness of work products, significant need for extra supervision or quality control, or competence or productivity that is significantly below the employee's grade level. When a Critical Element is composed of components or sub-elements, employees must be informed if unacceptable performance on a component or sub-element warrants an Unacceptable rating on the Critical Element as a whole.

I. Performance under Critical and Non-critical Elements will be used in deriving a summary rating.

J. Rating performance.

1. Ratings of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

2. No rating of record will assume a level of performance by an employee without an actual evaluation of that employee's performance.

3. The designation of a summary rating is used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under 5 C.F.R. 351.504.

K. Ratings of record will be assigned in accordance with the following criteria:

1. **Outstanding.** More than 50% of Critical Elements are rated Outstanding, and no Critical or Non-critical Element is rated below Exceeds Fully Successful.

2. **Exceeds Fully Successful.** 50% or more of Critical Elements are rated at least Exceeds Fully Successful. No Critical Element or Non-critical Element is rated below Fully Successful.

3. **Fully Successful.**

   a. All Critical Elements are rated at least Fully Successful. No more than one Non-critical Element is rated Minimally Satisfactory, and no Non-critical Element is rated Unacceptable; *or*
   b. A single Critical Element is rated Minimally Satisfactory, at least one Critical Element is rated above Fully Successful, and all other Critical or Non-critical Elements are rated at least Fully Successful.

4. **Minimally Satisfactory.**

   a. Two or more Critical or Non-critical Elements are rated Minimally Satisfactory; *or*
   b. A single Critical Element is rated Minimally Satisfactory, and all other Critical Elements are rated no higher than Fully Successful; *or*
   c. A single Critical Element and a single Non-critical Element are rated Minimally Satisfactory; *or*
   d. Any Non-critical Element is rated Unacceptable.

5. **Unacceptable.** One or more Critical Elements are rated Unacceptable.

L. If an employee makes written comments regarding her or his appraisal, then the employee may attach such comments to the appraisal, and the comments shall be attached to the appraisal in the electronic performance folder of the employee's official personnel folder.

M. The rating of record or performance rating for a disabled veteran shall not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

N. The rating of record may not hold an employee accountable for work that is not performed because of an absence for which the employee is on any type of approved leave.

O. In evaluating employees, supervisors will consider circumstances beyond an employee's control that affect the employee's performance, including any such circumstances identified by the employee. Supervisors have the discretion to grant a rating that the employee would have received in the absence of those circumstances. If a supervisor determines that – but for circumstances beyond an employee's control – an employee would have obtained a certain performance rating, then the supervisor will exercise discretion to ensure that the employee receives the same rating that she or he would have received in the absence of those circumstances.

P. Each rating of record shall cover a specified appraisal period. The Agency shall not carryover a rating of record prepared for a previous appraisal period as the rating of record for a subsequent appraisal period without an actual evaluation of the employee's performance during the subsequent appraisal period.

Q. When an employee performs duties outside of his/her supervisor's normal authority and control (e.g., detail), those overseeing these additional duties will provide input to the supervisor of record concerning the performance plan and the observed performance. The supervisor will take this input into account. For information on rating employees who are formally detailed or temporarily promoted, see Section 601.

R. The Agency shall not retroactively change or issue a rating of record that covers an earlier rating period, except under the following circumstances:

1. Within 60 days of issuance based upon an informal request by the employee;

2. As a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as a part of a bona fide settlement of a formal proceeding; or

3. Where the Agency determines that a rating of record was incorrectly recorded or calculated.

S. The Agency shall not use a rating method that establishes a forced distribution of summary ratings. However, it is acceptable to use rating methods that make distinctions among employees or groups of employees. For example, the Agency may compare or rank employees or groups of employees based on their performance for purposes of award and promotion decisions.

501. Linkage with Personnel Actions

501.1 Personnel Actions

A. **Removal/Demotion.** A rating of Unacceptable in any Critical Element requires remedial action as described in the provisions of this Instruction entitled "Performance Based-Actions."

B. **Probationary Employees.** The performance of an employee serving in a probationary or trial period, under 5 C.F.R. part 315, must demonstrate his/her fitness and qualifications for continued employment, and the employee's performance plan is a useful tool in making this determination. Supervisors and probationary employees should contact HR for further guidance.

C. **Performance Awards and Quality Step Increases.** These may be awarded under the provisions of the FLRA instruction entitled "GS-Employee Awards and Recognition System."

D. **Career Ladder Promotion.** In addition to any other Agency requirements (e.g., work available at the next higher grade level, budget considerations, etc.) an employee in a position with a career ladder must receive a summary rating of Fully Successful or better to be considered for noncompetitive promotion to the next higher grade level in a career ladder position.

E. **Merit Promotion.** When considering an employee for reassignment or promotion under merit promotion procedures, due weight must be given to past performance to the extent that the employee's current job and the job for which the employee is being considered have factors in common.

F. **Reduction-In- Force (RIF).** Service credit for RIF will be based on performance in accordance with the provisions of this Instruction at section 701 entitled "Adjusting Service Credit for Reduction-In-Force (RIF) Based on Performance."

G. **Within-Grade Increases.** To receive a within-grade increase under 5 C.F.R. part 531, subpart D, or 5 C.F.R. 532.417, an employee must receive a summary rating of Fully Successful or better.

601. Details, Transfers and Other Circumstances

The intent of the performance appraisal is to appraise an employee's performance covering an entire rating period. To do so, the following will be used to assure continuity throughout the appraisal process:

A. **Employee Position Changes.** When an employee changes positions within the FLRA, a performance (summary) rating will be prepared by the Initial Rating Official, reviewed and approved by the Approval Official, shared with the employee, and forwarded to the servicing human resources office or to the gaining organization.

B. **Rater Leaves or Changes Positions.** Before an Initial Rating Official leaves or changes positions, s/he will prepare a summary rating for each employee under his/her supervision, forward the rating to the Approval Official for review and approval, and then will share the rating with their employees and forward the completed FLRA Performance Appraisal Form to the servicing human resources specialist for inclusion in the Employee's Performance File.

C. **Employee Transfers to Another Agency.** Before an employee transfers to another Federal agency, the Initial Rating Official should complete a performance (summary) rating on the FLRA Performance Appraisal Form, forward the rating to the Approval Official for review and approval, and then forward the completed form to the servicing human resources specialist for inclusion in the employee's Employee Performance File.

D. **Employee not under Performance Plan for Minimum Appraisal Period.** When an employee has not served under a performance plan for his/her position of record for 90 calendar days by the end of the appraisal period because of a position change, career promotion, appointment, or any other reason, either:

1. The appraisal period will be extended to provide for the minimum appraisal period and a rating of record will be prepared at that time. The Initial Rating Official may take into consideration any (summary) ratings provided by the employee's previous Initial Rating Officials in determining the rating of record.

2. The Initial Rating Official may utilize any performance rating prepared by a previous Rating Official as the rating of record by concurring with it.

E. **Rater not in Position for Minimum Appraisal Period.** As long as sufficient information is available on which to appraise an employee's performance that covers a 90-day minimum period, there is no requirement that an Initial Rater occupy his/her position for a specific length of time. However, if a performance rating is not available or is not sufficiently developed to permit an appraisal, the appraisal period will be extended to provide for performance under the Initial Rater for the minimum appraisal period.

F. **Employee Detailed or Temporarily Promoted.** When an employee is detailed or temporarily promoted, a performance plan will be provided for the position to which s/he is detailed or temporarily promoted. If the detail or temporary promotion lasts for 90 calendar days or more, the Initial Rating Official will prepare a performance rating at the conclusion of the detail or temporary promotion that appraises the employee's performance while in the detail or temporary position. This rating should be forwarded to the Approval Official for review and approval, and then should be shared with the employee and forwarded to the servicing human resources office or employing organization for consideration at the end of the appraisal period. For

employees temporarily assigned outside the FLRA, a human resources specialist will make every effort to obtain similar information about the employee's performance.

G. **Employee Service on a Performance Improvement Plan (PIP).** Employees who have been given notice of unacceptable performance and an opportunity to improve performance will have their ratings of record postponed until the PIP expires.

701. Adjusting Service Credit for Reduction-In-Force (RIF) Based on Performance

701.1 Basis for Credit.

A. An employee's entitlement to additional service credit for performance is based on the employee's last three most recent performance ratings of record received during the 4-year period prior to the date of issuance of specific reduction in force notices. Ratings of record include annual ratings, which are pre-scheduled ratings generally given once each year, and ratings issued out of cycle to justify a within-grade increase decision. Special ratings, such as for a merit promotion action or a detail, are not used. An employee will not be assigned a new rating of record for the sole purpose of affecting retention standing. FLRA will establish and announce a cutoff date before specific RIF notices are sent, after which no new performance ratings will be used to adjust service computation dates. Performance ratings that were due before the cutoff date but that were not signed by the reviewing official – if one exists and otherwise approved if no reviewing official exists – and received in the Human Resources Division until after the cutoff date shall not be used to determine additional service credit.

B. If an employee had more than three annual ratings during the 4-year period, the three most recent ratings are used for determining service credit. An annual rating received prior to the 4-year period will not be used.

C. If an employee has not received three annual ratings during the 4-year period, credit is given based on the average of the number of ratings given; for example, if the employee receive one rating worth 20 years of additional service credit, the average of that one rating (the rating divided by one) is 20 years of additional service credit for performance.

D. When an employee's last three annual ratings as described above include one or more ratings given in other departments or agencies, the FLRA shall use the actual rating(s) given if the employee's performance ratings of record have been forwarded to and received by the FLRA. If the ratings are not forwarded, or if the employee has no actual ratings, FLRA will assign credit based upon the modal rating. The modal rating is the rating most frequently assigned to employees in the same job series and grade level, and in the same competitive level, as the employee without actual ratings.

E. Employees who have completed less than one year of current and continuous Federal service, and who have no actual ratings of record, will be credited with a level 3 (Fully Successful) rating.

701.2 Amount of Credit.

A. For annual ratings or out-of-cycle ratings used to support a within-grade increase decision that were entered into the record before October 1, 1997, an employee receives additional service credit for performance expressed in additional years of service, and based on the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three performance ratings of record. Performance is credited for RIF purposes as follows:

1. Twenty additional years of service for each performance rating of level 5, Outstanding;

2. Sixteen additional years of service for each performance rating of level 4, Exceeds Fully Successful; and

3. Twelve additional years of service for each performance rating of level 3, Fully Successful.

No additional service credit is given for performance ratings below the 5 CFR level 3 rating (i.e., Fully Successful).

B. For annual ratings or out-of-cycle ratings used to support within-grade increase decisions that are entered into the record on or after October 1, 1997 – when employees in the competitive area were rated under different rating patterns – performance is credited as follows: 20 years additional years of service for each performance rating at or above the rating of level 3.

701.3 Current Rating.

An employee's current annual performance rating of record is the last annual rating except in the following cases:

A. An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in 5 C.F.R. part 432 shall have the improved rating considered as the current annual performance rating of record. As with other ratings of record, the improved rating must have been signed by the reviewing official if one exists or otherwise approved if one does not and received in the Human Resources Division before the date of the specific reduction in force notices. In addition, an annual rating of unacceptable given before the opportunity period is counted as one of the employee's three most recent annual ratings used to determine service credit. If, however, because of performance improvement during the notice period of a 5 C.F.R. part 432 or 752 action, an employee is not demoted or separated and performance continues to be acceptable for one year after the notice, any record of the unacceptable performance is removed from the FLRA's records relating to the employee and the unacceptable rating is not considered.

B. An employee who has been demoted or reassigned under 5 C.F.R. part 432 or 752 because of unacceptable performance and, who as of the date of issuance of a specific reduction-in-force notice has not received a rating for performance in the position to which demoted or reassigned, shall have service credit adjusted based only on existing ratings in the past four-year window. An annual rating of unacceptable given before the demotion or reassignment is counted as one of the employee's three most recent annual ratings and is used to determine additional service credit.

801. Alternative Dispute Resolution (ADR) Procedure

Employees and supervisors are encouraged to resolve all disputes at the earliest stages and lowest levels. Employees have the option of using an ADR procedure to resolve a dispute under this Instruction which otherwise is subject to the negotiated grievance procedure (for bargaining unit employees), or the administrative grievance procedure (for non-bargaining unit employees). Disputes arising under this Instruction that are not subject to the grievance procedure available to the employee may not be raised using this ADR procedure.

A. **List of facilitators.** The FLRA will maintain a list of FLRA employees who shall serve as facilitators. The list will be jointly developed and updated by management and the Union of Authority Employees (U.A.E.), the exclusive representative of FLRA bargaining unit employees. When a dispute arises, the parties – the employee and the supervisor or manager involved in the dispute – will review the list and jointly select the facilitator.

B. **Time limits.**

1. The time limit for invoking the ADR procedure is 10 calendar days from the date on which the employee became aware, or reasonably should have been aware, of the action or inaction that gave rise to the dispute. But if the dispute concerns a performance appraisal and the affected employee has informally requested a change to that appraisal, then the time limit for invoking the ADR procedure shall be extended to 5 calendar days after the appropriate management official has accepted or denied the employee's informally requested change. Requests to invoke the ADR procedure must be submitted to the Human Resources Division before the expiration of the applicable time limit.

2. The time limit for completion of the ADR process is 30 calendar days, unless extended by mutual agreement of the parties.

C. **U.A.E. representation.** Where the ADR procedure is invoked by a bargaining unit employee, the U.A.E. will be given an opportunity to be represented at meetings conducted by the facilitator, and the U.A.E. will be informed of any resolution of the dispute.

D. **Beyond the ADR process.** If a dispute cannot be resolved through the ADR process, an employee may invoke the grievance procedure at Step 2 of the negotiated grievance procedure, or at the formal step of the administrative grievance procedure, as applicable, following the 30th day or expiration of the extension mutually agreed by the parties. The time limit for invoking the grievance procedure is the same as the period under that procedure for appealing to Step 2, or to the formal step, from a denial at the prior step.

901. Grievances and Appeals

An employee who is dissatisfied with an assigned performance rating may grieve the rating following the Agency's or the negotiated grievance procedure.

1001. Performance-Based Actions

A. **Assisting Employees in Improving Performance.** If, at any point during an appraisal period or at the end of an appraisal period, an employee is determined to be performing at a Minimally Satisfactory level regarding any Critical Element, or with respect to overall performance, the initial rating official should counsel the employee regarding noted deficiencies in performance. The employee should be told exactly what he/she must do to improve performance, as measured against the performance plan. Assistance to the employee may include, but is not limited to, formal training, on-the-job training, counseling, coaching, and closer supervision. The supervisor should document the initial and subsequent discussions by memoranda – copies of which the supervisor maintains and provides to the employee.

B. **Performance-Based Reassignment, Reduction in Grade, and Removal.** This paragraph applies to all non-bargaining unit employees covered by this Instruction, except those in Schedule C of the Excepted Service. (Unit employees are covered by a FLRA-U.A.E. collective-bargaining agreement.)

1. When informal attempts to improve employee performance to an acceptable level are unsuccessful, the employee must be given a formal opportunity to improve period of 90 calendar days to improve. This formal improvement period requires that the employee be put on a Performance Improvement Plan (PIP). The Human Resources Division (HRD) works with the supervisor in developing the PIP and in identifying and providing appropriate assistance to improve performance and documenting progress.

2. At the beginning of the formal improvement period, the supervisor must inform the employee, in writing, of the specific performance elements and standard(s) that the employee is not meeting and explain what the employee must do in order to improve performance to the acceptable level. The notice should inform the employee that, unless performance in the Critical Element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each Critical Element in which the employee's performance is

Unacceptable, the FLRA must provide the employee a reasonable opportunity to demonstrate acceptable performance. As part of the PIP, the initial rating supervisor offers assistance to the employee in improving unacceptable performance. The PIP may include, but is not limited to, formal training, on-the job training, counseling, coaching, and closer supervision. A copy of the letter and the PIP are not placed in the employee's OPF, but are maintained in an agency file in the HRD. If the employee's performance remains at the Unacceptable level at the conclusion of the opportunity period, the employee must be reassigned, reduced-in-grade, or removed subject to appropriate Agency and Government-wide regulations. If the employee's performance improves to an acceptable level at the conclusion of the opportunity period, the employee may be reassigned; but the employee cannot be reduced in grade or removed.

3. If the employee's performance remains at the Unacceptable level after the opportunity period, the initial rating supervisor or the reviewing official, as appropriate, proposes the employee's reduction in grade or removal; and provides the employee with a 30-day advance written notice of the proposed action. The notice must identify specific instances of unacceptable performance on which the proposed action is based and identify the Critical Element involved in each instance of unacceptable performance. The employee is entitled to be represented by an attorney or other representative and a reasonable time to answer orally and in writing. The proposing official should consult with appropriate higher level management officials and the Human Resources Director (or designee) before issuing the proposed notice and should provide a copy of the notice to the HRD. In accordance with 5 CFR 432.105, the notice period may be extended for a period not to exceed 30 days, with the concurrence of the appropriate concurring official, if one exists. The notice period may be extended further for the following reasons:

    a. To obtain and/or evaluate medical information when the employee has raised a medical issue in answer to a proposed reduction in grade or removal;

    b. To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

    c. To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

    d. To consider reasonable accommodation of a handicapping condition;

    e. To consider positions to which the employee might be reassigned or reduced in grade; or

    f. To comply with a stay ordered by a member of the Merit Systems Protection Board (MSPB) under 5 U.S.C. 1208(b).

Any further extension beyond 60 days must be approved by the Office of Personnel Management.

4. Within 30 days after the date of expiration of the notice period, a written decision must be issued to the employee. The decision must specify the instances of unacceptable performance which form the basis for the reduction in grade or removal. These instances must have occurred during the one-year period ending on the date of the 30-day advance written notice. The decision must inform the employee or applicable appeal and/or grievance rights. The decision must have the concurrence of an official in the organization above the proposing official, except there is no review of an action proposed by the FLRA Chairman for the Authority National Office; by the General Counsel for Office of General Counsel employees; or by the FSIP Chairman for FSIP employees. The employee must receive the written decision at or before the time that the action is effective.

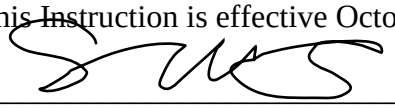
5. If the employee is not reduced in grade or removed, due to performance improvement during the notice period, and the employee's performance continues to be acceptable for one year from date of the proposed notice, any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from the Agency's records relating to the employee.

6. An employee who has been reduced-in-grade or removed for unacceptable performance is entitled to appeal to the MSPB consistent with 5 U.S.C. 7701.

1101. Program Administration and Evaluation

The FLRA's Performance Management System and this Instruction are administered and evaluated by HRD, in coordination with the U.A.E. and the FLRA Executive Director. Questions and suggestions for change are welcome and should be submitted to the HRD.

This Instruction is effective October 1, 2012.



Sarah Whittle Spooner
Acting FLRA Executive Director

Federal Labor Relations Authority

WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION

FLRA 6410.4

PROCEDURES FOR FILING FINANCIAL DISCLOSURE REPORTS	Issue Date: April 10, 2015

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0101. GENERAL PROVISIONS

101.1. Purpose.

Under the Ethics in Government Act of 1978, as amended, certain employees in Federal agencies are required to file financial disclosure reports in order to determine whether the employee has a conflict of interest in discharging his or her official duties. These reports are either available to the public or confidential, depending on the position occupied by the employee.

The Office of Government Ethics (OGE) 278 and 278-T forms are available to the public. The OGE 278 is an annual public financial disclosure report. The 278-T periodic transaction report discloses certain specific transactions, such as a purchase, sale, or exchange of an asset valued over $1000, within 45 days of the transaction.

The OGE 450 and 450-A forms are confidential. The OGE 450 is an annual confidential disclosure report. The OGE 450-A is an optional form for some confidential financial disclosure filers who have a previous OGE 450 on file, and who can certify that there have been no changes in their financial interests in the last year.

Additional information about these forms can be found on OGE's website, www.oge.gov. Specifically, more information on the OGE 278 and 278-T and current versions of the forms are available at http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Public-Financial-Disclosure/. Further information on the OGE 450 and 450-A forms and current versions of those forms are available at http://www.oge.gov/Financial-Disclosure/Confidential-Financial-Disclosure-450/Confidential-Financial-Disclosure/.

The purpose of this Instruction is to establish procedures for affected FLRA employees to follow in filing these forms.

101.2. Scope.

This Instruction applies to all FLRA employees required to file OGE 278 or OGE 450 reports, and to members of the public seeking to request access to OGE 278 reports under Part 0108 of this Instruction.

101.3. Cancellation.

This Instruction cancels the version of Instruction No. 6410.3 (revised) issued on September 20, 2011.

101.4. References.

a. Ethics in Government Act of 1978, Pub. L. 95-521, as amended.

b. Ethics Reform Act of 1989, Pub. L. 101-194, as amended.

c. 5 C.F.R. Part 2634, Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture.

d. Executive Order 12,731, 55 F.R. 42,547, 3 C.F.R. 1990 Compilation, p. 306.

0102. IDENTIFICATION OF REPORT FILERS

This section of these procedures identifies the positions required to file these reports, and provides information concerning how these designations are to be made.

102.1. Positions required to file OGE 278 and 278-T.

a. The criteria for identifying employees required to file the OGE 278 public financial disclosure report include:

i. Each officer or employee whose position is classified above GS-15 of the General Schedule prescribed by 5 U.S.C. § 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to, or greater than, 120% of the minimum rate of basic pay for GS-15 of the General Schedule, and each officer or employee of the FLRA in any position determined by the Director of the Office of Government Ethics (OGE) to be of equal classification. For example, Senior Executive Service employees, Administrative Law Judges, and Presidential Appointees are included.

ii. Any FLRA employee who is in a position which is excepted from the competitive service by reason of being of a confidential or policy-making character, unless excluded by the OGE.

iii. The Designated Agency Ethics Official ("DAEO") and Alternate DAEO.

b. Consistent with the guidelines in subsection a.i., above, the employees occupying the following positions are required to file new entrant, incumbent, or termination financial disclosure reports, as appropriate:

i. Members of the Authority

ii. General Counsel of the FLRA

iii. Chief Counsels to the Members of the Authority

iv. Deputy General Counsel

v. Executive Director of the FLRA

vi. Solicitor

vii. Executive Director of the Federal Service Impasses Panel

viii. Regional Directors

ix. Administrative Law Judges

x. DAEO

xi. Alternate DAEO

xii. Inspector General

xiii. Members of the Federal Service Impasses Panel, the Foreign Service Labor Relations Board, and the Foreign Service Impasse Disputes Panel, to the extent they spend more than 60 days in a calendar year performing official duties (these employees are required to file new entrant reports each year).

The DAEO has determined that these positions are required to file OGE 278 reports pursuant to 5 C.F.R. § 2634.202, and maintains and updates listings of these filers.

102.2. <u>Positions required to file OGE 450 or 450-A</u>.

a. The criteria for identifying employees required to file an OGE 450 or OGE 450-A confidential financial disclosure report include:

i. Each officer or employee of the FLRA whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. § 5332, and whose duties and responsibilities:

- require the employee to participate personally and substantially through decision or the exercise of significant judgment in taking FLRA action concerning contracting or procurement, or other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity, or

- require the employee to file a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind the Federal Service Labor-Management Relations Statute.

ii. Special Government employees, as defined in 18 U.S.C. § 202(a) and 5 C.F.R. § 2634.105(5), unless required to file a public disclosure report (OGE 278).

b. Consistent with the guidelines in section 102.2.a., above, employees occupying the following positions are required to file new entrant or incumbent confidential financial disclosure reports, as appropriate:

i. Director, Information Resources Management Division

ii. Director, Budget and Finance Division

iii. Director, Administrative Services Division

iv. Director, Human Resources Division

v. Members of the Federal Service Impasses Panel, the Foreign Service Labor Relations Board, and the Foreign Service Impasse Disputes Panel (these employees are required to file new entrant reports each year).

The DAEO has determined that these positions are required to file OGE 450 or 450-A reports pursuant to 5 C.F.R. § 2634.904, and maintains and updates listings of these filers.

c. Any appeal of a designation of an OGE 450 confidential filer is to be presented by the employee designated as the confidential filer to the DAEO, pursuant to 5 C.F.R. § 2634.906. A decision on appeal by the DAEO is final.

0103. DISTRIBUTION OF REPORT FORMS

103.1. OGE 278 and 278-T.

The DAEO will distribute a notification memorandum including an OGE 278 or OGE 278-T, as appropriate, a web page link to OGE's electronically-fillable forms, and information about electronic filing via www.integrity.gov to new entrant, incumbent, periodic transaction report, and termination filers.

a. Report forms for new entrant OGE 278 filers will be distributed to the new entrant by the DAEO to allow for timely filing of the report within 30 days of entry on duty to the covered position (unless the employee is coming from another covered position within 30 days of entry on duty with the FLRA).

b. Report forms for incumbent filers will be distributed by the DAEO on or before April 15th of each year.

c. Periodically, filers will need to access the web page link to the electronically-fillable periodic transaction report form (OGE 278-T) to allow for timely filing of the periodic transaction report within 30 days of receiving notification of the transaction, but no later than 45 days after the transaction. No less frequently than each calendar quarter, the DAEO will distribute a memorandum to public report filers with a link to the electronically-fillable form and a reminder of the requirement to file periodic transaction reports.

d. Report forms for termination filers will be distributed by the DAEO to allow for timely filing of the report within 30 days of termination from the covered position (unless the employee is moving to another covered position within 30 days of the termination).

103.2. OGE 450 and 450-A.

The DAEO will distribute a notification memorandum including an OGE Form 450, a 450-A (to be used only by eligible filers for a maximum of three consecutive years), and a web page link to the electronically-fillable forms to new entrant and incumbent filers.

a. OGE 450 report forms for new entrant filers will be distributed by the DAEO to allow for timely filing within 30 days of entry on duty to a covered position (unless the employee is coming from another covered position within 30 days of entry on duty with the FLRA).

b. OGE 450 and 450-A report forms for incumbent filers will be distributed by the DAEO on or before January 15th of each year.

c. OGE 450 report forms for Members of the Federal Service Impasses Panel, the Foreign Service Labor Relations Board, and the Foreign Service Impasse Disputes Panel, who are to file each year as new entrant filers, will be distributed by the DAEO on or before April 15th of each year. As Special Government Employees, these filers may not use the 450-A.

0104. FILING INSTRUCTIONS

All OGE 278, 278-T, 450, and 450-A report forms referenced in Parts 0102 and 0103 above, shall be submitted to the FLRA's DAEO either at 1400 K Street, NW, Suite 300, Washington, D.C. 20424, telephone (202) 218-7999, fax (202) 343-1007, via email at ethics@flra.gov, or, in the case of OGE 278 and 278-T, electronically via www.integrity.gov.

104.1. New entrants.

A new employee, within 30 days of assuming a confidential or public filer position, shall file the appropriate report with the DAEO.

a. However, this filing is not required if, within 30 days prior to assuming the position, the new entrant left another position for which a public or confidential report was required to be filed. In this case, the new entrant shall provide the DAEO with a copy of the most recent report filed in the prior position.

b. As for public report (OGE 278) filers, this new entrant filing requirement is also not required if the new entrant has already filed such a report as a nominee for the position.

104.2. Incumbent filers.

All incumbent filers shall file OGE 278 forms with the DAEO on or before May 15th of each year. All full-time incumbent filers shall file OGE 450 or 450-A forms with the DAEO on or before February 15th of each year.

Further, all incumbent filers shall file periodic transaction reports (OGE 278-T) with the DAEO not later than 30 days after receiving notification of any reportable transaction, but in no case later than 45 days after such a transaction. Filers are encouraged to submit periodic transaction reports on the fifteenth day of each calendar month. The report would contain the following information: (a) transactions that occurred during the previous calendar month; and (b) transactions of which the employee received notification during the first fourteen days of the current calendar month. Adhering to this regular reporting schedule will enable filers to meet the 45-day and 30-day deadlines for reporting most covered transactions. In rare instances, filers might occasionally receive notification of a transaction that occurred earlier than would permit timely disclosure of the transaction on the fifteenth day of a month. In that event, the filer must file a report sooner than the fifteenth day of the month, in order to comply with the 45-day deadline.

104.3. Termination filers (OGE 278 and 278-T public filers only).

A public filer shall file a termination report with the DAEO within 30 days after termination of employment with the FLRA, unless the individual is assuming another public filer position.

Any questions or requests for assistance in preparing or filing any financial disclosure reporting form should be directed to the FLRA's DAEO in person or in writing at the address given at the beginning of this section, or by telephone or fax at the numbers referenced at the beginning of this section, or by e-mail.

0105. EXTENSIONS OF TIME TO FILE REPORTS

105.1. Individual requests for extensions.

Any individual required to file any of the financial disclosure reports referenced in this Instruction may seek an extension of time to file such report by submitting such a request in writing to the FLRA's DAEO. Such request must be received by the DAEO no later than 7 calendar days before the report is due. The DAEO shall promptly respond to the extension request. However, for OGE 278 and 278-T filers, no extension (or second extension) in excess of 45 days can be granted by the DAEO. For OGE 450 and 450-A filers, no extensions totaling in excess of 90 days can be granted by the DAEO.

105.2. Blanket extensions for groups of employees or the entire agency.

If, in the discretion of the FLRA's DAEO, good cause exists to extend the filing dates for a group of employees or the entire agency, such extensions shall be promptly communicated to the affected employees by the DAEO. Examples of circumstances where such blanket extensions would be granted would include changes in legal requirements affecting report filing occurring at about the time filing would otherwise be due, or a work exigency which, in the opinion of the DAEO, prevents a group of similarly situated employees from filing their financial reports in a timely manner.

0106. EXCLUSIONS FROM FILING REQUIREMENTS

106.1. OGE 278 and 278-T.

An employee required to file OGE 278 and 278-T under Section 102.1. of this Instruction who is in a position classified at GS-15 of the General Schedule or below in Schedule C (i.e., a position of a confidential or policy making character), but who plays no actual role in advising or making policy determinations as to agency programs or policies, may be excluded from the OGE 278 and 278-T filing requirement. In the event such an exclusion would, in the view of the FLRA's DAEO, be appropriate, the DAEO will transmit in writing to OGE a description of the position(s) to be exempted, as well as identifying the individual(s) currently occupying the position(s). OGE's decision on review of the exclusion will be conclusive.

106.2. OGE 450 or 450-A.

Any employee or group of employees required to file OGE 450 or 450-A under Section 102.2. of this Instruction may be excluded from that filing requirement when the DAEO determines that:

a. the duties of an employee's position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest; or

b. the duties of the position involve such a low level of responsibility that submission of a report is unnecessary because of the substantial degree of supervision over the position, or the inconsequential effect of a potential conflict on the integrity of the government.

0107. PROCESS FOR REVIEWING REPORTS

a. Upon receipt by the DAEO of an OGE 278, 278-T, 450, or 450-A report for review, the date of receipt shall be noted on the first page of the report. The DAEO will maintain a log that lists all filers, due dates, and extensions. The DAEO will issue reminder letters to filers where necessary. The DAEO or the Alternate DAEO, as the DAEO's delegate, shall review the report, within 60 days of filing, for completeness, conflicts of interest, or violations of law, regulation or executive order.

b. After reviewing the report, the DAEO or Alternate DAEO will sign the report if he or she is satisfied that it is complete and reflects no conflict of interest. He or she will then notify the filer of this certification.

c. If the DAEO or Alternate DAEO believes that additional information is required, he or she shall request such information and set a date by which the information shall be submitted. This additional information shall become part of the report. The DAEO will notify the filer when the report is certified.

d. In the case of a report that must be amended, if the amendments are relatively minor, then the DAEO or Alternate DAEO may make them by handwritten notation, with permission from the filer. The DAEO or Alternate DAEO should make a note on the report to the effect that the amendments were authorized by the filer and should include the date the amendments were made. If the amendments are extensive, then the page of the report with the amendments should be resubmitted by the filer.

e. Except for OGE 278 and 278-T reports which must be submitted to OGE under 5 C.F.R § 2634.602(c)(1), the review and approval of OGE 278, 278-T, 450, and 450-A reports by the FLRA's DAEO and/or Alternate DAEO is final.

f. For OGE 278 and 278-T reports that must be submitted to OGE, the report will be certified by the DAEO and submitted to OGE at 278tracking@oge.gov no later than 60 days after the report is filed with the agency.

g. The DAEO's 278 and 278-T reports will be reviewed and signed by the Alternate DEAO as initial reviewer and by the Chairman as final reviewer, pursuant to the procedures described in this section.

0108. CUSTODY OF AND ACCESS TO REPORTS

a. Completed OGE 278, 278-T, 450, and 450-A reports shall be maintained by the DAEO in a locked cabinet, the keys for which are kept only by the DAEO and Alternate DAEO. Except as provided in subsection c, below, concerning OGE 278 and 278-T reports, or as required by directive of appropriate authority such as OGE, access to OGE 278, 278-T, 450, and 450-A reports by any other source is prohibited.

b. OGE 278, 278-T, 450, and 450-A reports shall be maintained by the DAEO for 6 years after receipt, after which time they shall be destroyed unless needed for an ongoing matter. Reports filed by nominees who were not subsequently confirmed by the Senate, unless needed for an ongoing matter, shall be destroyed 1 year after the filer is no longer a nominee or candidate.

c. Members of the public may apply to obtain access to OGE 278 and 278-T reports maintained by the DAEO pursuant to 5 C.F.R. § 2634.603. OGE Form 201 shall be used by a member of the public to apply for access. The DAEO shall respond to such applications pursuant to the terms of § 2634.603. Public access to OGE 278 and 278-T reports shall not be permitted until 30 days after receipt of the report by the DAEO.

d. No member of the public has access to OGE 450 and OGE 450-A reports, except pursuant to a Federal court order or as otherwise provided under the Privacy Act.

0109. REMEDIAL ACTIONS TO RESOLVE CONFLICTS OF INTEREST

a. If, upon review of an OGE 278, 278-T, 450, or 450-A report, the DAEO determines that the report does not fulfill the requirements of applicable laws and regulations, he or she shall notify the filer of that conclusion; afford the filer the opportunity for a personal consultation, if practicable; determine what remedial action under subsection b. below, is appropriate; and notify the filer in writing of the remedial action which is needed, and the date by which it is to be completed. Unless approved by the DAEO in writing, all remedial action shall be completed within 3 months of the time the filer is advised by the DAEO of the action to be taken. If the filer complies with the request for remedial action in the time allotted, then the DAEO should indicate in the comments section of the report what remedial action has been taken, and then sign and date the report. If the filer does not comply by the date set in the written request, then the DAEO shall notify the Chairman of the Authority or the Director of OGE, as appropriate, for referral to the Attorney General.

b. Remedial action may include, as appropriate:

i. divestiture of a conflicting interest;

ii. resignation from a position with a non-Federal entity;

iii. restitution;

iv. establishment of a trust pursuant to 5 C.F.R. Part 2634, Subpart D;

v. procurement of a waiver under 18 U.S.C. § 208(b)(1) or (3);

vi. written recusal from the matter under the filer's official responsibility that causes the conflict of interest; or

vii. voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

0110. DELINQUENT OR FALSIFIED REPORTS

110.1. Delinquent Reports.

a. If an OGE 450 or OGE 450-A report is more than 30 days late, the DAEO shall contact the delinquent filer, advise the filer of the fact that the report is overdue, and specify a date for submission of the report. If the report is still not submitted by the specified date, the DAEO will contact the filer's immediate supervisor for appropriate action.

b. Any OGE 278 or 278-T report that is more than 30 days late will require payment of the $200 late fee, payable to the U.S. Treasury, specified in 5 C.F.R. § 2634.704. Upon determination that the report is late, the DAEO will advise the delinquent filer that because the report is late, the $200 fee is due at the time of filing; if the $200 fee is not paid, debt collection proceedings will be instituted against the employee; and a waiver of the fee may be sought.

Any request for waiver of this penalty must be in writing to the DAEO, who will review the request and make the final decision on granting the waiver.

110.2. Failure to file or falsifying reports.

a. The Chairman of the Authority or Director of OGE, as appropriate, will refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report, failed to provide information required on a public report, or falsified any information on a public or confidential financial disclosure report.

b. The Attorney General may bring a civil action against an OGE 278 or 278-T public filer who knowingly and willfully falsifies or who knowingly and willfully fails to file or report

information required. A civil action may also be brought against any person who obtains or uses a public report for any purpose prohibited by 5 C.F.R. § 2634.603(f).

c. A criminal action may be brought against either a public or confidential filer for supplying false information on any financial disclosure report.

110.3. <u>Administrative actions</u>.

The Chairman of the Authority or other appropriate official may take action, including adverse action under 5 C.F.R. Part 752, against any public or confidential filer for failing to file public or confidential reports, for filing such reports late, or for falsifying or failing to report required information.

This Instruction is effective on April 10, 2015.

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Sarah Whittle Spooner
Executive Director

Federal Labor Relations Authority

GOVERNMENT PURCHASE CARD POLICY INSTRUCTION
FLRA No. 4420.1

February 25, 2016

1.0. POLICY AND PURPOSE

This policy instructs FLRA employees in the proper use of the Government Purchase Card (Separate from the Travel Card Policy). The Government purchase card shall be the preferred method to purchase and to pay for micro-purchases per the Federal Acquisition Regulation (FAR) Part 13.2

1.1. Purpose

The FLRA uses the United States Government Purchase Card program administered by the General Services Administration (GSA). The Government Purchase Card is intended to improve the efficiency of operations by streamlining payment procedures and reducing administrative burdens associated with the purchasing of supplies and services in accordance with the FAR. The FLRA uses CitiDirect MasterCard for its Government Purchase Card program.

1.2. Definitions

Administrative Services Division (ASD) – ASD shall serve as the focal point for all Government Purchase Card actions, questions, comments and concerns. Please contact ASD with any questions, before incurring a charge.

Agency Program Coordinator (APC) – The APC is responsible for managing the Purchase Card Program and serving as the liaison between the Bureau of Fiscal Service and CitiDirect. The APC in conjunction with the Bureau of Fiscal Services establishes the policies, procedures, and training requirements for the Purchase Card Program. . The ASD Director is the FLRA Agency Program Coordinator.

Approving Official (AO) – The Approving Official reviews and approves monthly Cardholder statements ensuring that all purchase documentation is complete and accurate and that only authorized purchases have been made. The Approving Official nominates potential cardholders, maintains current account information, and provides prior

authorization to make purchases to his/her Cardholder. This individual may also assist the Cardholder in resolving disputed payments. The Approving Official is normally the supervisor to whom a Cardholder reports for authorization to purchase required supplies and services.

Budget and Finance Division (BFD) – The BFD is responsible for all budget, accounting, and finance responsibilities within the FLRA. The BFD maintains the FLRA's accounting lines, and is responsible for approving funds on all procurement requests.

Bureau of Fiscal Services (BFS) – The BFS, formerly the Bureau of Public Debt, is the agency that maintains the FLRA's Government purchase card program.

Cardholder – Authorized holder of a Government Purchase Card used for making purchases in support of the agency mission.

CitiDirect – An online purchase card management system offered by CitiDirect, enabling agencies to reconcile, submit, and monitor purchase card transactions online.

Cycle Date – The cycle date or "billing cycle date" is the date on which the Cardholder billing cycle will close each month. Cardholder monthly statements will reflect all charges received by CitiDirect for billing from the 4th of the preceding month to the close of business on the 5th of the current month. Note that in cases when the 5th falls on a non-business day (i.e. holiday or weekend) billing will be closed the last business day before the holiday or weekend. For example, if the 5th falls on a Saturday, the billing cycle would close on Friday the 4nd. The related e-statement should be available in CitiDirect on or around the 4th of the month.

Electronic Funds Transfer – The Electronic Funds Transfer (EFT) rule (31 CFR Part 208) requires that most Federal payments be made electronically. Waiver information is available at http://www.fms.treas.gov/eft/regulations/fareft.txt in Section 32.1103.

Invoice Processing Platform (IPP) – The IPP is the platform the FLRA utilizes to pay its non-credit card transactions for supplies and services.

Micro-Purchase Thresholds – Micro-purchases are purchases of supplies or services up to $3,500, except for construction and services subject to the Service Contract Act. A micro-purchase for construction is limited to $2,000. Micro-purchases are exempt from most FAR requirements. For instance, micro-purchases may be made without obtaining competitive quotes if the Cardholder determines that the price

is reasonable. The FAR encourages non-procurement personnel to use the purchase card for micro-purchases whenever feasible. Service Contracts exceeding $2,500 may be subject to the terms and conditions of the Service Contract Act in accordance with FAR subpart 22.10. Therefore, Cardholders are now required to contact the APC if they anticipate a service effort that exceeds $2,500. The APC will determine if the procurement is subject to the Service Contract Act and will advise accordingly.

Ratification –"Unauthorized commitments," as used in the Federal Acquisition Regulation (FAR), means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. "Ratification," as used in this policy, means the act of approving an unauthorized commitment by an official who has the authority to do so.

2.0. GOVERNMENT PURCHASE CARD

The Government Purchase Card is useful when making some non-recurring procurements that are needed quickly. Whenever feasible, however, a purchase order should be used to allow for easier tracking of costs. Unless authorized by the Contracting Officer, the Purchase Card should not be used to procure furniture, equipment or other large purchases. As noted previously, there is a $3,500 threshold. If a Purchase Card is expected to be used for recurring expenses from the same vendor and the total annual cost is expected to exceed $3,500, then a contract must be established and the Purchase Card charges applied to that corresponding contract for payment.

The FLRA is participating in the Government Purchase Card program so that small, one-time purchases can be made quickly when necessary. The Government Purchase Card program is administered by the Agency Program Coordinator (APC) located in ASD. Unless otherwise noted, there will be one cardholder in each regional field office. At headquarters, there will be one cardholder in IRMD and up three cardholders in ASD to handle requests from both the regional offices and headquarters. The APC and alternate allow authorized cardholders to make approved purchases necessary to carry out their program(s).

3.0. CONVENIENCE CHECK

In April, 2008 the Office of Management and Budget (OMB) issued a memorandum recommending that use of convenience checks be kept to a minimum. OMB M-08-18 https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-18.pdf . As an increased measure of security, the FLRA uses convenience checks sparingly and all checks will be approved by the APC prior to disbursement. All purchase requests shall be entered into the PRISM contract writing system for payment to be rendered via credit card, EFT or convenience checks. If a vendor does not have the

ability to accept credit card payments, the vendor may submit their invoices to the FLRA's invoice center, through the IPP. Vendors who do not accept credit card must have a valid, non-expired DUNS number registered with the System for Award Management (SAM) at www.sam.gov.

4.0. AGENCY REQUIREMENTS

The Government Purchase Cardholder is the individual to whom a card is issued. The Purchase Card bears the name of the individual and may only be used by that person. No other person is authorized to use the card. Cards are not issued as a "general-use" office card. Cardholders are responsible for any and all transactions against their account; therefore, cardholders should use caution when giving out their card information so as not to compromise the card.

Cardholders may not use the purchase card for travel related items (airline tickets, car rentals, lodging), personal purchases, rentals and leases, or splitting requirements into several purchases to avoid single purchase limits.

All computer purchases require prior approval from IRMD, and all furniture purchases require prior approval from ASD.

Any charge to accounting other than the cardholder's office accounting must have the approval of the office to which the transaction is being applied. The approval must be in writing and become part of the procurement record.

The Cardholder will receive their statements from the APC via email on or around the 5th of every month. Within 5 working days the FLRA Requisition Form 80 (FLRA-80), supporting receipts, and the approved statements will be returned to the APC. Supporting receipts must include vendor invoices and/or delivery receipts along with internal records that document **prior authorization of the purchase via the FLRA 80 form, and independent confirmation of the receipt of the goods or service**. The employee who originally made the purchase should sign the supporting documents. However, anyone in the organization who can verify the goods or services were received may sign the documents. Discrepancies must be immediately discussed with the vendor involved (and CitiDirect if needed) to resolve the error.

5.0. RESPONSIBILITIES OF FLRA CITIDIRECT OFFICIALS

5.1. Agency Program Coordinator (APC)

The APC is responsible for:

1. Processing all requests for new cards;
2. Notifying CitiDirect of all canceled cards;

3. Periodically reviewing all cardholder purchases to determine if the program is meeting its objectives under the Internal Control process;
4. Reporting findings and making recommendations to the Executive Director or appropriate Regional Directors; and,
5. Accessing the CitiDirect system before the end of each quarter (December 31, March 31, June 30, September 30) to verify/change accounting information on pending transactions; and
6. Notifying Cardholders of changes, updates, etc.

5.2 Approving Official

The Approving Official is responsible for:

1. Ensuring that all purchases made by the Cardholders within his or her review are appropriate and that the charges are accurate.
2. The Approving Official will resolve all questionable purchases with the Cardholder before approving the statement for payment. In the event an unauthorized purchase is detected, the approving official will notify the APC for further instructions.

5.3 Regional Directors

Regional Directors are responsible for:

1. Determining who will be the Cardholder(s); and
2. Reviewing procurement requests made by the cardholder and ensuring they are valid before funds are approved.

5.4 Cardholders

Cardholders are responsible for:

1. Ensuring the safety and security of their Purchase Card;
2. Certifying that purchases through this program are appropriate, authorized, fully documented, have been received or have assurances of receipt;
3. The Cardholder will receive their statements from the APC via email on or around the 5th of every month. Within 5 working days, the supporting receipts, and the approved statements, will be returned to the APC. Supporting receipts must include vendor invoices and/or delivery receipts along with internal records that document **prior authorization of the purchase via the FLRA 80 form, and independent confirmation of the receipt of the goods or service**.
4. Maintain appropriate documentation. Forward a copy of the e-statement with receipts and supporting documents to the Approving Official for review and retention. Supporting documentation needs to be maintained for three years after final payment has been made on an order.

5. Coordinating with the Approval Official when they will not be able to complete their monthly statement in a timely manner and providing sufficient documentation to allow the Approval Official to complete the statement when necessary;
6. Downloading and forwarding a hard copy of any disputed information to the CitiDirect; and
7. Notifying the APC of any problems/concerns they have with their accounts.

6.0. TRAINING

The FLRA and BFD require each new cardholder receive basic procurement training in the use of the purchase card. Training shall be completed using the GSA on-line course to train cardholders. The APC is responsible for ensuring that all new cardholders complete the course and for providing periodic guidance and information for all cardholders. The course is available at Government Purchase Card on-line training.[1] Click on "More" under Training from GSA in the bottom right of the screen. Scroll down to Federal Employee Cardholder Training and click on Purchase Card. Upon completion of the course, print out the certificate and forward to the APC for verification. Any changes to program requirements or new requirements will be communicated to all program personnel by APC.

7.0. REQUESTING CARDS

7.1. Card Issuance Procedures

The procedures for requesting purchase cards are as follows:

1. Completed, legible CitiDirect purchase application forms
2. A signed statement that Government Purchase Card procedures have been read.
3. Completed training certificates.

Once the APC receives and approves your documentation, your Purchase Card will be ordered via CitiDirect. The APC will specify the Accounting String Code assigned to the Cardholder. The Budget Finance Director will assist the APC in determining the appropriate Accounting String Codes for each Cardholder.

7.2. Card Cancellation Procedures

The Cardholder or the Approving Official may cancel purchase cards upon written request to the APC. The actual purchase card shall be returned to

[1]GSA SmartPay Purchase Card Training Card Holders, https://training.smartpay.gsa.gov/training/purchase-card-cardholders.

the Cardholder's Approving Official. It is the Approving Official's responsibility to destroy the purchase card. The Approving Official is also responsible for maintaining closed cardholder records for three years after final payment has been made. Cardholders are responsible for canceling any recurring charges that are automatically charged to their account. Employees who have been transferred to another location within their agency need not cancel if they are to continue as Cardholder in their new position. However, this must be discussed with the APC.

8.0. PURCHASES

8.1. Purchases Covered

Generally, Purchase Cards are used to purchase official Government supplies or services that cost up to the Micro Purchase Threshold $3500 or less, when the supplies must be obtained quickly. In rare cases, selected cardholders may be authorized by the Contracting Officer to purchase goods up to the Simplified Acquisition Threshold $3500.00 to $150,000.00 (for card holders with the appropriate training). Purchasers are reminded that they are still bound by mandatory sources of supply and various other statutes and regulations covered in the FAR.

8.2. Local Travel/Transportation Expenses

Employees are reimbursed for local travel/transportation expenses through the agency travel system (CONCUR/CGE). The Government Purchase Card shall not be used for the Cardholder's local travel or transportation expenses. In emergency situations where supplies/services are needed while on travel, the Cardholder shall contact ASD prior to utilizing their card; if they have one.

8.3. Travel Advances

Travel advances shall not be processed or paid for with the Government Purchase Card. All travel and associated expenses shall be processed through the CONCUR/CGE travel system. In emergency situations where the purchase card is needed, the user will contact ASD for approval.

9.0. SALARY PAYMENTS PROHIBITED

The Government purchase card shall not be used to pay employee salary; in regular or emergency situations. The Government purchase card shall not be used to pay for partial or full salary payments.

10.0. TRANSIT SUBSIDY REIMBURSEMENT AND OTHER MISCELLANEIOUS PAYMENTS

Transit subsidies are a Government entitlement; therefore, the Government Purchase Card shall not be utilized to pay for transit subsidies. Transit subsidies shall be requested

from ASD and not via the purchase card. All miscellaneous purchase requests must go through ASD before utilizing the Government Purchase Card.

11.0. STATE AND LOCAL SALES TAXES

Generally, purchases made by the Federal Government are exempt from state and local taxes. As stated in 48 CFR 29.3, when it is economically feasible to do so, executive agencies shall take maximum advantage of all exemptions from state and local taxation that may be available. If appropriate, the Contracting Officer shall provide the contractor with a Standard Form 1094, U.S. Tax Exemption Certificate to verify that the purchase is being made by the Government.

The face of the purchase card indicates "U.S. Government Tax Exempt." The cardholder must advise the merchant of this at the time of the purchase. If state and local taxes are computed on purchases, charges for taxes may be recovered from the individual cardholder. To avoid this, ask the merchant to contact the CitiDirect at the toll-free 800 number listed on the back of the credit card to verify that purchases are tax exempt. If a tax question cannot be resolved at the time of purchase, the cardholder must dispute the charge upon receipt of the bank transaction.

12.0. PROHIBITED PURCHASES

Cards cannot be used to purchase certain classes of items depending on the authorization level associated with the card. Restrictions governing airline tickets, hotel reservations, car rentals, and food and beverage services are set out in the initial delegation package received by the cardholder along with the purchase card. Other prohibited transactions include (but are not limited to) the following:

1. **Printing and copying services** provided by the agency, except if printing and copying services are not available within the agency, then the Cardholder may use an outside printing or copying service, provided that the service does not exceed $3,500.
2. **Personal purchases from Government employees** or family members of Government employees.
3. **Travel-related expenses**:
    - Rental or lease of motor vehicles on official travel.
    - Purchase of gasoline to operate a rental vehicle.
    - Purchase of airline, train, bus, or boat, or other travel related tickets.
    - Purchase of meals, drinks, lodging, or other travel or subsistence costs.
    - Invitational travel expenses.
4. **Purchase of personal clothing or footwear**, except in emergency situations, when required for safety, or when specifically authorized by the APC. Proper documentation must be included in the purchase file with the receipts.

5. **Cash advances.**
6. **Give-away items** such as plaques, cufflinks, and plastic holders for credentials, bracelets, ashtrays, Christmas cards, paperweights, cigarette lighters, key chains, and similar mementos.
7. **Employee awards**, unless the award is in compliance with an approved awards program and funded for this purpose.
8. **Telephone calls.**
9. **Prepayment of training** that has not been approved by ASD.
10. **Rental or lease** of land or buildings.
11. **Recurring services** estimated to exceed the micro-purchase threshold in a 12 month period. Services may be placed on the purchase card if the amount does NOT exceed the Micro-Purchase Threshold within a 12 month period. This includes maintenance and subscriptions.
12. Items listed on the attached FLRA "Don't Buy" List and Excluded Parties List (EPLS), which can be found at www.epls.gov or www.sam.gov.

13.0. UNAUTHORIZED PAYMENTS

If an unauthorized payment occurs, the cardholder will prepare a memorandum for submission to the Executive Director and ASD Director for ratification.

If not ratified, the responsible individual will be directed to personally reimburse the FLRA for the amount of the unauthorized payment. Failure to replace the funds when directed could result in an action to offset the amount against the individual's salary and/or retirement fund.

Note: Use of the card does not relieve the purchaser of responsibility for obtaining required funds and program approvals prior to making purchases.

14.0. ITEMS REQUIRING SPECIAL HANDLING

All computer purchases (hardware, software, copiers, printers, etc.) must be cleared by the IRMD or designee before procuring the item(s).

All furniture and other items requiring the assistance of a loading dock or the freight elevator must be cleared within the corresponding building in the FLRA HQ, and the Regional Offices.

15.0. USE OF THE PURCHASE CARD

The Government Purchase Card is preferred to all other purchasing methods for acquisitions at or below the Micro-Purchase Threshold. The APC, in conjunction with the Executive Director and Chairman, shall delegate procurement authority to the Government employee requesting use of a purchase card. The delegation

of authority must be in writing stating dollar limits for both single and aggregated monthly purchases (FAR Part 13.201).

The cardholder must ensure proper use of the Purchase Card. This includes documenting funds availability prior to purchase, maintaining a purchase files receiving prior approval of the purchase from the Approving Official, and reconciling the monthly statements.

The Approving Official is ultimately responsible for the proper administration of the program within his/her respective office. The Approving Official, in conjunction with the BFD Director, must ensure Government funds are available prior to granting purchase approval for purchases above the Micro Purchase Threshold. The Approving Official also reviews, and approves the monthly CitiDirect statement once the cardholder reconciles the CitiDirect statement. The APCs and/or Approving Officials must ensure separation of duties among key functions, such as making purchases, authorizing purchases and payments, certifying funding, and reviewing and auditing.

The Purchase Card that a Cardholder receives from CitiDirect has his or her name embossed on it. No other individual may use this card. It has been specifically designed so that it will not be confused with personal credit cards.

CitiDirect has established a number of steps in the authorization process to be taken each time the card is used. The vendor will use an electronic or telecommunication method for obtaining authorization on all purchases except those made with a convenience check. Such authorization ensures that purchases are within the single purchase and monthly aggregate purchase limits established by the APC. The accounting system records transactions during the month-end processing of e-statements in the CitiDirect system.

15.1. Card Abuse

Purchase Card transactions are reviewed to ensure that only authorized purchases have been made. Purchase Card transactions that have been identified as potentially fraudulent will be referred to the appropriate federal criminal investigative body. Refer all questions on card abuse to the APC.

An improper purchase is any purchase that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts include overcharges and undercharges. An improper purchase can be one of two types: (1) unauthorized or (2) incorrect, and may include any of the following:

1. A purchase that was made for an ineligible recipient or for an ineligible service;
2. A fraudulent purchase;

3. A duplicate purchase;
4. A purchase for services not received;
5. A purchase for the incorrect amount;
6. A purchase made in the absence of available funding; and
7. A purchase made on the same day from the same vendor to circumvent cardholder single transaction limits.

Unauthorized purchases can also consist of items that are intentionally purchased and are outside of the cardholder's purchasing authority. Such incorrect purchases are mistakes that are the result of an unintentional error during the purchase process.

Fraudulent purchases include those made by cardholders that were unauthorized and intended for personal use, purchases made using government purchase cards or account numbers that had been stolen or compromised, and purchases correctly charged to the charge card but that involve potentially fraudulent activity that went undetected.

Improper, fraudulent, abusive, or negligent use of the purchase card is prohibited. The following administrative and/or disciplinary actions for negligence, misuse, abuse, or fraud may be taken:

1. Corrective action, up to and including removal, as deemed appropriate by the agency;
2. Deactivation, suspension, or cancelation of employee accounts;
3. Holding the cardholders personally liable to the Government for the dollar value of unauthorized purchases; and
4. Subjecting the Cardholder to a fine of not more than $10,000 and/or imprisonment for not more than 5 years under Sec. 1001, Title 18 U.S.C. § 287.

Misuse or unauthorized use of a Purchase Card must be reported to the Inspector General. The FLRA Inspector General Contact information is 202-214-7744 or drooney@flra.gov.

15.2. Purchase Limitations

The purchase card is to be used within the following limitations:

1. The total of a single purchase may be comprised of multiple items, but cannot exceed the assigned single purchase limitation. Single purchases may not be split between two or more transactions to circumvent the limits, or the FAR. The Cardholder must document the reason for any purchase that may have the appearance of a split transaction or for any unusual item or service.

2. The items purchased must not be currently available in the agency's "in-stock" inventory.
3. All items purchased over the counter must be immediately available. Backordering is prohibited. The vendor must be able to deliver all items purchased by telephone or the Internet within 30-days of purchase. Ordering without this assurance is not permitted.
4. Cardholders are responsible for ensuring that funds are available at the time the purchase is made, through inputting a procurement request.

15.3. Disputes

Disputes are initiated through the CitiDirect on-line process. A cardholder should first indicate on-line that a transaction is being disputed. Then the cardholder must download/print a copy of the dispute form, sign and fax to CitiDirect for processing. Cardholders may always consult the APC for assistance.

15.4. Payment Process

Payments will be made electronically through BFS. The cardholder is responsible for the timely monitoring and reconciling of charge transactions in his/her cardholder account. ASD is responsible for the overall Purchase Card program and will monitor all accounts to ensure the accurate and timely submission of transaction information. The APC will work with the bank and BFS to ensure that the CitiDirect system is working properly.

15.5. Lost or Stolen Cards

The cardholder must immediately notify the CitiDirect as soon as he/she notices that the card is missing. The Government Purchase Card's 24-hour customer service number is 1-800-790-7206.

If the card is lost or stolen, the Cardholder is also responsible for timely notifying the APC with the following information:

1. Cardholder's complete name;
2. Card number;
3. Date the card was lost or stolen;
4. If stolen, the date reported to police;
5. Date the CitiDirect was notified; and,
6. Any purchases made on the day the card was lost or stolen.

16.0. REVIEW AND AUDIT

All purchases made under this program are subject to review and audit for compliance with procurement and fiscal regulations. Audits will include a review of the cardholder statements (and the convenience check log where applicable), applicable receipts and

other documentation, as well as proper use of the card and timely approval of transactions in the CitiDirect system.

17.0. COMPLIANCE

The APC and/or Authorizing Official will periodically monitor all credit card accounts and, at least on a quarterly basis, randomly select transactions for review. At that time the APC/Authorizing Official may require that hard-copy documentation related to the transaction be forwarded for verification.

18.0. NON-COMPLIANCE/MISUSE

Any purchases found to be improper will be subject to **ratification** and may result in the cardholder being liable for the costs. Depending on the facts, intentional misuse of the card may constitute fraud. The cardholder will be held personally liable to the Government for the amount of any unauthorized (non-Government) transaction. Additionally, as appropriate, the cardholder may be subject to a fine, disciplinary action up to and including dismissal within the agency, or imprisonment for action relating to purchase card misuse and fraud. The Executive Director or APC may cancel any Purchase Card at their discretion and at any time. Regional Directors may also request that a particular card be canceled. Failure to adhere to the procedures described above for use of the card may result in cancellation of the card.

Effective Date: This Policy is effective February 25, 2016.

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Sarah Whittle Spooner
Executive Director, Federal Labor Relations Authority

Federal Labor Relations Authority

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION
FLRA No. 3431.6

SUBJECT: PAY SETTING AND ADJUSTMENT POLICY FOR SENIOR EXECUTIVE POSITIONS

1. GENERAL PROVISIONS

Purpose and Scope

This instruction sets forth the policy and process for setting and adjusting pay for individuals in the Federal Labor Relations Authority (FLRA) Senior Executive Service (SES), in accordance with 5 C.F.R. § 534.404. The criteria that will be used to set and adjust a senior executive's rate of basic pay at a rate that exceeds the rate for Level III of the Executive Schedule applies only if the FLRA's SES performance appraisal system has been certified under 5 CFR part 430, subpart D.

The instruction makes meaningful distinctions and provides compensation to FLRA executives that are commensurate with their responsibilities and duties. It ensures comparability and transparency in executive position and compensation management across all components of the agency. It is built upon the foundational principle that executive positions vary in terms of impact on mission, level of complexity, span of control, inherent authority, scope and breadth of duties and responsibilities.

The instruction is designed to promote a common understanding of position differences, a common perspective about the relationship of these differences to mission outcomes, and a common language to identify these differences. With this understanding, the FLRA can more effectively:

1) Recognize that scope and breadth of responsibilities and performance in some positions has more organizational or agency-wide impact than different responsibilities and comparable performance in others, and compensate and reward executives more appropriately as a result;
2) Provide executives with information to help guide career decisions;
3) Use executive positions to grow and develop high-caliber leadership capability; and
4) Facilitate succession planning efforts.

Under no circumstances will an executive's basic pay exceed EX-II under a certified performance appraisal system.

2. AUTHORITY

The Chairman determines, after review of the pay recommendation, the rate of basic pay for both newly selected and incumbent SES members. The Chairman must approve any determination to increase a senior executive's rate of basic pay more than once in any 12-month period.
The authority to approve exceptions to the policy up to the maximum pay for EX-II as prescribed by 5 U.S.C. § 5382 for a certified performance appraisal system is limited to the Chairman. This authority is to be exercised prudently so as not to undermine the policy precepts of Section 1 above.

3. RESPONSIBILITIES

The **Chairman** will:

a. Review pay recommendations presented by selecting and/or management officials and the FLRA Executive Resources Board (ERB), and performance-based pay adjustment recommendations presented by the Performance Review Board (PRB), and determine pay for all SES positions of the FLRA.

b. Ensure that comparable positions are designated similarly and that decisions are based upon the fair and meritorious application of position characteristics set forth in *Appendix A*.

c. Approve and document exceptions for executive pay setting upon initial appointment based upon compelling needs, which include an ability to recruit and retain a high-caliber, diverse executive leadership team.

d. Ensure that the requirements of this instruction are implemented and applied in a consistent, transparent, trusted, credible, equitable, nondiscriminatory, and nonpolitical manner.

e. Ensure that all executives are notified of the provisions of this policy.

The **FLRA Executive Resources Board** will review initial pay recommendations made by selecting and/or management officials to ensure that comparable positions are designated similarly, and that decisions are based upon the fair and meritorious application of position characteristics set forth in *Appendix A*. The ERB will also recommend pay setting for all SES appointments including initial appointments and transfers to the SES and pay adjustments (except for annual PRB related recommendations) for all FLRA executives to the Chairman.

The **FLRA Performance Review Board** will review and make recommendations to the Chairman on all SES annual performance-based bonus and pay adjustment recommendations made in accordance with FLRA Instruction 3431.3 and 5 C.F.R. § 534.404.

The **FLRA Executive Director** is responsible for providing direct assistance to the Chairman in establishing the following:

a. The annual pay levels for all executives after considering mission requirements, labor-market conditions, availability of funds, recruitment and retention issues, pay comparability to other Federal agencies, and any other relevant factors.

b. Guidance for determining the maximum rate for performance-based pay adjustments and bonuses.

c. The effectiveness of this policy in distinguishing executive positions in terms of impact on mission, level of complexity, span of control, inherent authority, scope and breadth of responsibility.

The **Human Resources Director** will:

a. Ensure compliance with provisions of this policy so that processes associated with managing it are fair, equitable, credible, and transparent.

b. Review and validate pay levels for all SES positions made by each component. The validation will ensure that pay for all positions have been designated in a consistent manner.

4. PAY SETTING PROCEDURES

Executive Pay Decisions. The criteria in *Appendix A* will be used to set and adjust a senior executive's rate of basic pay. The criteria ensures that individual pay rates or pay adjustments, as well as their distribution within the SES rate range, reflect meaningful distinctions. Accordingly, senior executives who demonstrate the highest levels of individual performance and/or make the greatest contributions to the agency's performance, or in the case of newly-appointed senior executives, those who possess superior leadership or other competencies, must receive the highest rates of basic pay or pay adjustments. In making pay decisions, the Chairman should be sensitive to the pay scale of personnel under the General Schedule, such that, to the extent possible, the pay of executives is set at competitive rates.

Non-Career Executives. Pay of non-career executives must be approved by the White House Presidential Personnel Office and the OPM prior to the effective date of appointment.

FLRA Inspector General. This policy **does not apply** to the Inspector General, which is consistent with the Inspector General Reform Act of 2008 (P.L. 110-409, October 2008) to "amend the Inspector General Act of 1978 to enhance the independence of Inspectors General."

New Appointees into the SES System. The pay level recommended by selecting officials and the ERB must reflect the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the vacant SES position, and the individual's current responsibilities. The FLRA may offer a salary up to ten percent (10%)

above the appointee's existing pay, but not normally to exceed Level III of the EX. Pay above EX-III is reserved for new executives who have demonstrated superior leadership or other competencies.

Transfers from another Federal agency. The Chairman may set the pay of a senior executive transferring from another agency to the FLRA at any rate within the SES rate range subject to the limitation on the maximum rate of basic pay in 5 CFR 534.403(a) and the restrictions on reducing the pay of career senior executives in 5 CFR 534.403(h)(2). A senior executive is not entitled to retain his or her rate of pay upon transfer to FLRA. If the executive considering the transfer is not satisfied with the proposed rate of pay, the executive need not accept the position. If pay is set at the same SES rate the senior executive received in his or her former agency, the action is not considered a pay adjustment for the purpose of applying 5 CFR 534.404(c). If pay is set at a rate higher that that received in the executive's former agency, the action is processed as a transfer and it restarts the clock under the 12-month rule.

A pay increase may be warranted if the transfer is to a position of substantially greater scope, responsibility, and impact. Under these circumstances, the Chairman may approve a pay increase of up to ten percent (10%) subject to the limitation on the maximum rate of basic pay (5 CFR 534.403(a)).

Reappointment of a former SES Member. The FLRA has broad authority to set the basic pay of a former SES member upon reappointment to the SES at any rate within the SES range if there has been a break in service of more than 30 days. If there has been a break in service of 30 days or less, the SES member's basic rate of pay may be set at any rate within the SES range, (without regard to whether the employee received a pay adjustment during the previous 12-month period) provided that it is not higher than the former SES member's pay unless the Chairman approves a higher rate.

Decreases in SES pay. A decrease in pay as a result of the executive receiving a minimally successful or unsatisfactory performance rating; failure to meet a critical performance element; and/or disciplinary action will be determined using the following guidelines:

- The reduction may not be greater than ten percent (10%) of the executive's basic pay.
- A reduction in pay requires written notice, a reasonable response time, and approval by the Chairman in accordance with performance-based or adverse action procedures, as set forth in 5 CFR parts 430, 534.404(j)(3), and 752.

Suspension of SES performance appraisal system certification. A senior executive whose rate of basic pay is higher than the rate for Level III of the EX may not suffer a reduction in pay because the agency's applicable performance appraisal system certification is suspended under 5 CFR 430.405(h)(2). The senior executive will continue to receive his or her current SES rate and is not eligible for a pay adjustment until the FLRA senior executive service performance appraisal system is reinstated under 5 CFR part 430, subpart D. The SES rate of pay is not considered a retained rate of pay for the purpose of applying 5 U.S.C. 3594 and 5 CFR part 359, subpart G, or 5 U.S.C. 5363 and 5 CFR part 536, subpart C.

Performance-based pay adjustments. After the initial pay rate is established, subject to allowable exceptions, all subsequent pay adjustments for SES are predicated on a performance appraisal consistent with FLRA Instruction 3431.3 and 5 C.F.R. § 534.404.

5. EFFECTIVE DATE

The policies addressed in this instruction are effective immediately and replace any prior or conflicting FLRA policies involving SES pay setting and adjustment.

Sarah Whittle Spooner
Executive Director

9/26/16
Date

Appendix A

PAY SETTING CRITERIA FOR SES POSITION(S) AT THE FLRA

Responsibility - *Levels of latitude and responsibility, as indicated by degree of policy and decision-making authority*

- Degree of latitude exercised
- Degree of policy-making authority
- Degree of decision-making authority
- Reports to one or more Presidential Appointees
- Supervises at least one SES
- Serves as the most senior level in a substantial function

Complexity - *Degree of functional and/or technical expertise required by the position*

- Size of budget
- Size and types of staff
- Interplay of policies
- Degree of precedence
- Single- vs. multi-function

Scope of Influence – *Degree that the executive's position impacts within, and outside of the FLRA*

- Activities are vital to mission accomplishment
- Contacts and purpose of contacts generally involve multi-agency, multi-component, or multi-function interactions
- Represents top leadership to external entities, including Congress, OMB and White House staff
- Number of organizations affected
- Level of organizations affected
- Degree of consensus, collaboration, coordination required

Impact on Mission – *Degree to which the executive formulates and leads agency/component-wide strategic plans, programmatic goals, objectives, policies and standards, and has accountability for outcomes*

- Impact on, and accountability for, agency-wide and/or component-wide objectives and strategic goals
- Impact on development of goals and objectives

Other

- Nature and quality of the executive's experience, qualifications, and accomplishments as they relate to the responsibilities of the SES position
- Executive's current pay

FEDERAL LABOR RELATIONS AUTHORITY FRAUD PREVENTION PROGRAM

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FEDERAL LABOR RELATIONS AUTHORITY FRAUD PREVENTION PROGRAM

A. PURPOSE. This Instruction establishes the Federal Labor Relations Authority Fraud Prevention Program to provide a strategy for preventing fraudulent activities and eliminating the losses that fraud inflicts on both the taxpayer and customer. This strategy relies on prevention, deterrence and the early detection of fraudulent schemes and actions which ultimately affect critical FLRA operations and mission accomplishment.

B. SCOPE. The provisions of this Instruction apply to all FLRA organizational elements and employees, as well as to individuals and entities doing business with, or receiving funds or benefits from, the FLRA.

C. AUTHORITY. The Inspector General Act of l978 (Pub. Law 95-452) as amended by, inter alia, the Inspector General Act Amendments of l988 (Pub. L. 100-504; 5 U.S.C. App. (1994 & Supp. II 1996).

D. REFERENCES.

1. 31 U.S.C. §3729 et seq., False Claims Act.
2. 41 U.S.C. §51 et. seq., Anti-Kickback Act.
3. 19 U.S.C. §2306 (f), Truth in Negotiations Act.

E. DEFINITIONS.

Fraud. A false representation of a material fact that is intended to deceive or mislead. This includes the intentional omission or concealment of a material fact when there is a duty to reveal or disclose that fact.

Fraudulent Acts. Actions involving misrepresentation which usually have an adverse impact on operations and mission accomplishment. These acts may involve, but are not limited to, the following:

1. Endangerment of government personnel and property;
2. Monetary loss;

3. Denigration of program or personal integrity;

4. Compromise of the procurement process; or

5. Reduction of mission accomplishment.

Significant Loss. A significant loss is defined as a loss of $100,000.00 or more, or that causes an operational or resource erosion which adversely impedes the accomplishment of the Agency mission.

F. POLICY. It is the policy of the FLRA to have zero tolerance for any type of fraudulent activity or victimization. The FLRA Fraud Prevention Program is premised on the conscious prevention and deterrence of "crimes" and the prevention of fraudulent conduct. Preventing such conduct both deters repeated occurrences and protects individuals from being victimized. All FLRA employees and individuals under contract with FLRA have the responsibility to report all types of fraudulent activity immediately to their supervisor or the FLRA Inspector General. To promote this program, the Office of Inspector General will promote awareness programs and initiatives to educate personnel about fraud, and publicize exemplary practices of fraud prevention.

G. RESPONSIBILITIES

1. The FLRA Inspector General shall:

   a. Monitor all investigations, audits, and internal reviews for fraud and corruption, and ensure that appropriate remedies are identified to cognizant management officials;

   b. Recommend management controls to prevent and deter fraudulent activities;

   c. Inform the Chair, FLRA, of losses that involve bribery, gratuities, conflict of interests, program mismanagement and procurement; and, all fraudulent activities which affect the safety, health, or security of FLRA operations and resources, regardless of loss value;

   d. Periodically brief management on Federal trends and remedies for fraudulent activities;

   e. Educate the FLRA workforce on crime prevention; and

   f. Notify the Federal Protective Service and/or Department of Justice of criminal actions, as appropriate.

2. FLRA management shall:

   a. Take a proactive approach toward fraud prevention;

   b. Expeditiously pursue appropriate civil, contractual and administrative remedies to ensure the integrity of FLRA programs; and

   c. Recognize exemplary efforts in fraud prevention.

3. FLRA employees shall immediately report incidences or suspected incidences of fraudulent activity to the FLRA Inspector General.* The attached format provides guidelines for the submission of information in writing, by fax, or by telephone.

This Instruction is effective _____.

_____

Solly Thomas
Executive Director

Attachment

*Questions related to this Instruction should be referred to the Office of the Inspector General.

ATTACHMENT 1

REPORT OF POSSIBLE FRAUDULENT ACTIVITY

Name *_____

Organization *_____

Telephone No. *_____

Nature of Activity_____

Scope of Activity_____

Perpetrator of Activity_____

Statute, Policy, Procedure Violated (if known)_____

Practices Contributing to Cause the Activity_____

Victims Affected by the Activity_____

Possible Fixes_____
_____

Additional Comments_____
_____
_____

* Although we prefer to be able to contact you, you may choose not to fill out this information if you want to assure anonymity.

Return to: Federal Labor Relations Authority
Office of the Inspector General
Suite 240
607 14th Street, NW.
Washington, DC 20424-0001

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION

SUBJECT: **GAINSHARING TRAVEL SAVINGS**

FLRA No. 3800.1
09/24/2013

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A. PURPOSE

This Instruction establishes the Federal Labor Relations Authority's Gainsharing Travel Savings Program. The objective of this program is to achieve a net savings in travel expenses to the FLRA and the Federal Government. These savings will be accomplished by providing an incentive to employees to reduce lodging expenses when on official travel. Employee participation in this program is voluntary.

B. SCOPE

All FLRA employees are eligible to participate in this program with the following exceptions: Presidential Appointees, non-career members of the Senior Executive Service, and Schedule C appointees.

To be eligible, travel must be on official FLRA business that is consistent with the Federal Travel Regulation.

C. REFERENCES

1. Government Employees Incentive Award Act, 5 U.S.C., §§ 4501-4507

2. Federal Travel Regulation

3. Financial conflict of interest provisions - 18 U.S.C. § 208

4. Hotel and Motel Fire Safety Act of 1990

D. TYPES OF TRAVEL COVERED

This program covers both domestic and foreign Temporary Duty (TDY) travel. For extended TDY travel (travel in connection with a detail in excess of 30 days), only the first 30 calendar days of such travel is eligible for calculation of travel savings. Permanent change of station travel and travel under a reimbursable support agreement are not included in this program.

E. LODGING SAVINGS

Lodging savings is defined as situations where employees incur daily lodging expenses which are less than the maximum lodging rate approved for the locality where the TDY is performed at the time of travel. *(Some locations have seasonal adjustments to the maximum allowable rate.)* This program does not apply where lodging is provided by the FLRA under a contract arrangement. In order to participate, a traveler is required to use his/her FLRA approved travel credit card to pay for lodging expenses incurred. Employees who choose to stay

with a friend or relative, or who have not been given an FLRA approved travel credit card, are excluded from this requirement.

When a room is shared with another FLRA employee on official travel, employees should request to be billed separately to allow for an accurate calculation of the lodging cost. If this is not possible, a daily rate will be determined for each employee by dividing the total lodging costs by the number of employees sharing the room and the number of nights in order to calculate a daily rate for each employee. The net travel savings to FLRA when an employee chooses to stay with a friend or relative will be 50% of the maximum lodging rate for the locality where the TDY is performed. Employees who choose to stay at the residence of a friend or relative may not meet with members of the public on official business at the lodging site.

F. TRAVEL OUTSIDE DUTY HOURS IN LIEU OF LODGING COSTS

If an employee is entitled to incur an additional night of lodging when on TDY, but chooses instead to return to his/her residence by traveling outside the employee's normal work hours, the lodging expense which would have been incurred is considered lodging savings for purposes of this program.
Lodging costs incurred while on personal time, such as annual leave, during a period of official travel will not be counted as lodging savings.

G. INCREASED TRANSPORTATION EXPENSES IN CONNECTION WITH LODGING

If an employee incurs additional transportation expenses as a result of the choice of lodging so as to qualify for lodging savings, those expenses must be deducted from any lodging savings calculation. A determination must be made by the travel approving official whether any transportation expenses were excessive.
Examples of excess transportation expenses include, but are not limited to, renting a vehicle at a TDY work site to travel to a place of free or reduced lodging when the rental would not have been authorized if the employee had selected a place of lodging closer to the work site; driving a privately owned vehicle 25 or more miles to the TDY work site to obtain free or reduced lodging; or incurring taxi fare which is 15% or more than would normally be incurred to obtain free or reduced lodging.

While this program is designed to maximize efficient use of government resources, employees are always encouraged to stay in a place that provides safe and secure lodging. If an employee is staying at a hotel/motel, that establishment must meet all the requirements of the *Hotel and Motel Fire Safety Act of 1990.*

H. SUBMISSION OF TRAVEL SAVINGS FORMS

Employee travel vouchers should be submitted within 5 work days after returning from official travel. Where that travel includes eligible savings as defined in this program, employees shall submit a Travel Savings Form, together with appropriate supporting documents to their regular travel approving official when they submit their travel voucher. An employee must have saved the FLRA at least $50 on a single trip in order to submit a Travel Savings Form. Multiple trips may not be combined on a Travel Savings Form in order to meet the minimum savings requirement of $50. The employee award amount will be equal to 50% of the Net Travel Savings to the FLRA in lodging expenses.

Travel approving officials shall review and, if complete, approve and forward Travel Savings Forms to the appropriate Award Approving Official for their component. Award Approving Officials for the Gainsharing Travel Savings Program are as follows: the Executive Director for the Authority, the Deputy General Counsel for the Office of General Counsel and the Executive Director of the Federal Service Impasses Panel for FSIP.

I. AWARD PAYMENT SCHEDULES

Award Approving Officials shall retain all Travel Savings Forms for their respective components which meet requirements under this program for each 6 month payment cycle (January 1 thru June 30 and July 1 thru December 31) and process cumulative awards for each eligible employee. At the end of each cycle, these Officials shall forward approved awards for their components to the Human Resources Division for processing.

The minimum cumulative award amount for an employee is $50 (the minimum cumulative travel savings to FLRA must be $100) per award payout cycle. The maximum cumulative award amount is $1000 per award payout cycle. An employee's travel savings balance will be set at zero after the end of the period covered by an award payout. Taxes will be withheld from the approved award amount. Since this award, like any other award, is considered income to the employee, the approved award amount will be reported on the employee's W-2 Form. All award payouts will be made by Direct Deposit Electronic Funds Transfer.

J. EMPLOYEE RESPONSIBILITIES

1. Employees are expected to exercise the same discretion in incurring Government travel expenses that a prudent person would exercise when traveling for personal business.

2. The FLRA Travel Savings Form, including receipts, must be submitted by the employee to the appropriate travel approving official when the employee's travel voucher is filed. Employee travel vouchers should be filed within 5 work days after completion of a trip.

3. Travel Savings Forms must be complete, including the signed employee certification as to the validity of the employee's travel award claim.

K. MANAGEMENT RESPONSIBILITIES

1. The travel approving official is responsible for reviewing and approving the employee's Travel Savings Form with supporting documents and forwarding them to the appropriate Award Approving Official.

2. Award Approving Officials will consider and retain for each 6 month award payment cycle, all Travel Savings Forms which meet the minimum total cumulative employee claims and forward at the end of each cycle all Travel Savings Awards to the Human Resources Division for processing.

3. The Human Resources Division will be responsible for processing all Travel Savings Awards and initiating payment.

L. CONTACT INFORMATION

Questions regarding travel and related expenses should be referred to the Budget and Finance Division. Questions related to the processing of awards under this program should be referred to the Human Resources Division.

M. EFFECTIVE DATE

This Instruction is effective October 1, 2013.

Executive Director

09/24/13
Date

Travel Savings Form

Employee Name: _____ Official Duty Station (Office):_____

Organization Code: _____ Travel Authorization Number: _____

Temporary Duty (TDY) Location(s): _____
(city) (county) (state)

	1st Night	2nd Night	3rd Night	4th Night	5th Night		
Travel Dates							
Name of Hotel/Motel ***or***							
Enter "Private" (if not commercial)							
City, State of Lodging							
Maximum Lodging Allowed For TDY Location							
Actual Lodging Cost							
Savings							
Excess Transportation Costs							

Net Travel Savings to Agency: _____(Minimum $50)
(maximum lodging allowed, minus actual lodging, minus excess transportation costs)

Amount of Travel Savings Award to Employee: _____(50% of above amount)

ALL SUPPORTING DOCUMENTS (ORIGINALS OR COPIES) SHOULD BE ATTACHED TO THIS FORM.

EMPLOYEE CERTIFICATION

I certify that the information contained in this Travel Savings Form and claim for travel award is true and accurate to the best of my knowledge and belief. This certification concerns a matter within the jurisdiction of an agency of the United States and making a false, fictitious, or fraudulent certification may render the maker subject to criminal prosecution under Title 18, U.S.C., Section 1001, Civil Penalty Action, providing for administrative recoveries of up to $10,000 per violation, and/or agency disciplinary actions up to and including removal.

Employee Signature: _____

Date: _____

APPROVING OFFICIAL

Date Received: _____

Approval Signature: _____ Date: _____

– INCOMPLETE FORMS CANNOT BE PROCESSED AND WILL BE RETURNED FOR COMPLETION --

Federal Labor Relations Authority
Washington, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION

FLRA No. 3431

GS-Employee Awards and Recognition System	Issue Date: 6/29/2012

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A. Purpose

The policy of the Federal Labor Relations Authority (FLRA) is to establish an employee Awards and Recognition System (System) to recognize organizational, group, and individual performance that exceeds expectations, especially performance that contributes to the core values, mission, and goals of the agency. Employee awards and recognition will be given as close to the time of achievement as possible. All monetary awards are subject to budgetary limitations.

B. Scope

This Instruction applies to all FLRA General Schedule employees.

C. Reference

This Instruction must be applied in conjunction with Title 5, United States Code (USC) Chapter 45, "Incentive Awards" and Chapter 53, "Pay Rates and Systems."

D. Definitions

1. Award: something bestowed or an action taken to recognize excellence in performance and reward an individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest.

2. Contribution (used in connection with On-the-Spot awards, and Special Act or Service awards): an accomplishment achieved through an individual or group effort in the form of an invention, or a special act or service in the public interest connected with, or related to, official employment which contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork.

3. Honorary Award: a gesture of respect given to an employee to recognize his or her performance and value to the organization. Honorary awards are generally non-monetary and a symbolic form of recognition.

4. Intangible benefit: a benefit to the Government that cannot be measured in terms of dollar savings.

5. Non-monetary award: a medal, certificate, plaque, citation, badge, challenge coins, mementos or other similar item that carries an honorary connotation.

6. On-the-Spot award: an award that is designed to provide immediate recognition for exceptional contributions that benefit agency operations.

7. Performance award or Performance-based award: a cash payment to an employee based on the employee's rating of record and a written justification authorized by 5 U.S.C. 4505(a) and 5 CFR 451.104.

8. Non-Performance based awards: awards that recognize contributions or value to an organization or the public interest and are not based on an employee's rating of record.

9. Quality step increase: an increase in an employee's rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade (as defined in 5 CFR 531.403) in accordance with section 5336 of title 5 U.S.C., and with section 4 of the Performance Management and Recognition System Termination Act of 1993 (P. L. 103-89), and with 5 CFR Part 531.

10. Special act or service award: a special contribution or accomplishment in the public interest which is a contribution either within or outside of job responsibilities.

11. Tangible benefits: benefits or savings to the Government that can be measured in dollar terms.

12. Time-off award: an excused absence granted to an employee without charge to leave or loss of pay, granted to a Federal employee as a form of incentive or recognition. Time-off awards may be granted as an incentive or recognition for an invention, superior accomplishment, productivity gain or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations including validated cost savings and productivity improvements; or a special act or service in the public interest in connection with or related to official employment.

13. Work plan: a written document identifying how individual performance results will support organizational goals and objectives.

14. Performance Plan: a written plan which provides the direct linkage between long-term strategic goals outlined in agencies' strategic plans and what managers and employees are

expected to accomplish in a single performanceyear. The regulatory requirements include establishing the elements and standards for employee performance. Performance elements and standards should be measurable, understandable, verifiable, equitable, and achievable. Through critical elements, employees are held accountable as individuals for work assignments or responsibilities.

15. Employee in good standing: The employee must be performing at the fully successful level or above and without any disciplinary action within the previous twelve month period.

16. Component Heads: The component head is defined as the Chairman for the Authority, the Chairman for the Federal Services Impasses Panel and the General Counsel for the Office of General Counsel.

17. Office Heads: The office heads are defined as the head of the following offices: All Regional Offices, Office of the Solicitor, Office of Administrative Law Judges, Office of the Executive Director, Collaboration and Disputes Resolution Office and the Office of the Inspector General.

18. Sub-offices: Case Intake and Publication (CIP) and Human Resources Management Division (HRMD) are sub-offices within Chairman's office. The Administrative Services Division (ASD), Information Resource Management Division (IRMD) and Budget and Finance Division (BFD) are sub-offices under the Office of the Executive Director.

E. Basic Eligibility

Unless otherwise specified within an individual award category, all FLRA employees meeting the basic requirements noted below are eligible for consideration for awards under this program.

1. Performance rating of record must be fully successful or above.

2. Employees must be in good standing for the previous twelve month period.

3. Additional award eligibility criteria are set forth in the descriptions of individual award categories and in the attached table.

F. Award Justification

A separate narrative justification is required for all award recommendations. The narrative should describe the contributions being awarded in enough detail to justify the type and amount of the award.

G. Recommending and Approving Authorities

1. Performance-based Award (Performance Award or a Quality Step Increase)

Office Heads are responsible for recommending performance-based awards. The Chairman and Authority Members are responsible for approving awards for their respective staffs; the General Counsel is responsible for approving awards for the Office of the General Counsel (OGC) staff; and the Chairman of Federal Service Impasses Panel (FSIP) is responsible for approving awards for FSIP staff. This authority may be redelegated as deemed appropriate.

2. Monetary Awards under $10,000

Office Heads are responsible for recommending awards under $10,000. The FLRA Chairman and Authority Members are responsible for approving awards under $10,000 for their respective employees; the General Counsel is responsible for approving awards under $10,000 for OGC employees and the Chairman of FSIP is responsible for approving awards under $10,000 for FSIP employees. This authority may be redelegated as deemed appropriate.

3. Monetary Awards over $10,000

In accordance with Title 5 U.S.C. 4502, as the head of the agency, the FLRA Chairman is responsible for reviewing and approving all cash award recommendations in excess of $10,000 (either as an individual award, or as a result of the combination of awards in a fiscal year). An award in excess of $10,000, but not exceeding $25,000, may be recommended by the FLRA Chairman but must be approved by the Office of Personnel Management (OPM). This does not include SES Bonus or Performance Awards.

4. Honorary Awards

The FLRA Chairman approves all internal honorary awards and honorary award nominations based on service to the FLRA (such as, a nomination for a Presidential Award) that require approval from outside the FLRA.

5. On-the-Spot Awards

Heads of offices and sub-offices may approve on-the-spot awards up to $250 for employees in their respective offices.

H. Guiding Principles

1. Recognition should be given for significant outstanding performance that advances office, component and agency goals, and should be tied to a specific accomplishment.

2. Recognition is most effective when it is meaningful to the individual.

3. Awards are not entitlements.

4. Recognition should not be used as a substitute for supplies, support services, or training.

5. Recognition of employee performance should be applied in a fair and equitable manner across components.

I. Types of Awards

1. Monetary awards.

The award amounts shown under each type of award are meant to ensure consistent application of awards.

a. Rating-based Performance Awards

Ratings based performance awards recognize the overall performance of individual employees and are granted on the basis of a rating of *Fully Successful* or higher. The award pools are calculated in accordance with the guidance

below at I.1.a. (1) "Award Pools" and allocated based on ratings of record and supported by a written justification in accordance with the criteria in Section H.1 above:

Level 3, Fully Successful: up to 1% of base salary and locality pay
Level 4, Exceeds Fully Successful: up to 2% of base salary and locality pay
Level 5, Outstanding: up to 3% of base salary and locality pay

These amounts will be based on availability for funds and will be assessed annually. Decisions regarding performance awards must be made within 60 days after the end of the July 1 - June 30 appraisal period. Management is responsible for recommending and approving performance awards.

(1) Award Pools

Separate award pools are established for managers/supervisors and employees. The FLRA has established the following award pools -- all of which are subject to budgetary limitations:

(A) Authority Office

Managers/supervisors and employees of the three Member offices, Case Intake and Publication, Human Resources Management Division, Collaboration and Alternative Dispute Resolution Office, Office of the Solicitor, Office of the Administrative Law Judges, Office of the Executive Director, Information Resource Management Division, Administrative Services Division, Budget and Finance Division and Office of Inspector General.

(B) FSIP employees.

(C) Managers/supervisors and employees of Office of the General Counsel: Headquarters, Atlanta Regional Office, Boston Regional Office, Chicago Regional Office, Dallas Regional Office, Denver Regional Office, San Francisco Regional Office, Washington Regional Office.

(2) Based on budgetary limitations, the percentage range for the establishment of each employee award pool shall be established at a minimum of .5% of aggregate GS salaries. Pool levels shall be consistently established and applied across all components within the agency.

(3) The following actions are excluded from computation of the award pool: quality step increases and awards granted as part of a settlement agreement. All of these awards are also subject to budgetary limitations.

b. FLRA Distinguished Peer award — $500.

This award recognizes FLRA employees who have been champions in specific areas of focus for their organization when coupled with individual excellence and employees who develop or demonstrate new and creative work methods, doing more with less, serving as a highly positive team player resulting in improved morale, and/or actively assisting other staff members in addition to regular duties. The nomination must be in writing and the award will be given in the form of a printed certificate signed by the supervisor or manager approving the award, along with monetary compensation. This award may be granted to any FLRA employee who is not a supervisor or manager. Nominations shall be submitted to the Labor Management Forum (LMF) for review and selection on a biannual basis. The LMF may select up to six awards per year.

(1) Who may be nominated: This award may be granted to any FLRA employee who is not a supervisor or manager. The employee must be performing at a Fully Successful level and above. In addition, the employee must have no conduct or adverse actions pending. For this reason nominations should be reviewed and signed by the nominee's supervisor prior to submission to the LMF.

(2) Nominations must be submitted in writing and identify at least three of the criteria below that apply to the nominee.

(A) How your nominee provides extraordinary service beyond their basic job description and demonstrates values of integrity, diversity, excellence, collaboration, innovation, and respect.

(B) How your nominee developed or demonstrated new and creative work methods, doing more with less, serving as a highly positive team player resulting in improved morale, and/or actively assisting other staff members in addition to regular duties.

(C) How your nominee provides superior sustained service or a special one-time contribution to the mission.

(D) How your nominee continually contributes to a respectful, diverse, and collaborative work environment.

(E) How your nominee exhibits exceptional resourcefulness, innovation, or creativity, and exemplifies excellence and integrity in workplace relationships, interactions, and decision-making.

c. Special Act or Service Awards - $500, $750, $1000, or $1500.

Special Act or Service Awards are granted for contributions or accomplishment which are in the public interest which significantly exceed an employee's regular expectations, duties, and responsibilities, and which yield exemplary results. This award will be given in the form of a printed certificate signed by the respective employee manager or supervisor, along with monetary compensation. Management is responsible for recommending and approving these awards.

d. On-The-Spot — $100 to $250.

This award is a type of special act or service award that is designed to provide immediate recognition for exceptional contributions that benefit agency operations. This award is designed to provide an immediate reward for activities such as an extra work assignment, a one-time achievement, or an idea that has produced an immediate benefit to the organization. Management is responsible for recommending and approving these awards.

e. Quality Step Increase (QSI).

(1) This is an increase in an employee's rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade. QSI's are granted to recognize outstanding performance; that is, performance that exceeds expectations in all critical elements of the performance plan, over a 52-week period. A QSI carries with it the expectation that the outstanding performance that was exhibited over the past 52 weeks will continue into the future, and should be granted only when an employee's performance rating reflects a summary rating of Outstanding. This ratings-based payment is recognition of performance excellence but does not constitute an award as defined by OPM.

(2) QSI's will not be granted when:

(A) The employee is not expected to remain in the same position or a similar position at the same grade level for a minimum of at least 60 days after the date of the increase.

(B) The high quality performance was demonstrated while the employee was detailed to another position or to another agency.

(C) The employee has not been in the same position continuously for the preceding 12 months.

(3) Nomination, Review and Approval.

A request for QSI must be submitted by the rating official to the component head. Upon approval, the component head will submit the request to the Human Resources Division for processing.

(4) Relationship between a Within Grade Increase (WGI) and a QSI.

The QSI will not change the effective date of the employee's normal within-grade pay increase except when receipt of a QSI places an employee in the fourth or seventh step of a grade, the waiting period for a regular within-grade increase is extended by 52 weeks under the graduated waiting-period schedule prescribed by section 5335(a), title 5, United States Code (10 USC 5335(a)).

2. Non-monetary awards.

a. Time-off-from-duty

(1) This award is an excused absence granted to an employee, in recognition of either a special act or high quality performance, without charge to leave or loss of pay. Management is responsible for recommending and approving this award.

(2) A part-time employee may be granted no more than the average number of hours worked during a biweekly pay period during a leave year, and a single award may be no greater than one-half the total hours allowed during a leave year. For example, an employee with a part-time tour of 32 hours a week may be granted up to 64 hours in a leave year, or be granted a single award that does not exceed 32 hours.

(3) A full-time employee may be granted up to 40 hours in a leave year by the head of the office (e.g., Solicitor, Regional Director) for employees in their respective offices. Awards in excess of 40 hours in a leave year must be approved by the FLRA Executive Director. No more than 80 hours may be granted in a performance year.

(4) Supervisors and managers who recommend or approve time-off awards are granting permission to the employee to schedule use of the time off. Officials should consider the impact on office workload and productivity before recommending or approving time-off awards

b. FLRA Honorary Awards

Honorary awards are granted to recognize distinguished, career-oriented achievements, and for clearly significant contributions that have benefited the Government. They may be granted independent of, or in addition to, a monetary award. Honorary awards are designed to select and bestow a singular honor as official recognition of achievement and as an incentive to further accomplishment

(1) Distinguished Service Award.

This is the highest form of recognition for employees within the Agency. It is granted for outstanding achievement or exemplary accomplishment of duties. The award consists of a FLRA Distinguished Service Award certificate, a pin and a plaque inscribed with the employee's name, organization, and year of the award. Nominees must have:

(A) Accomplished assigned duties in such a manner as to have been clearly exceptional among all who have performed similar duties;

(B) developed improved methods and procedures;

(C) been responsible for inventions which accomplished extraordinary results for FLRA or the Federal Government;

(D) exhibited great courage and voluntary risk of personal safety beyond the call of duty in performing an act which resulted in direct benefit to the Agency or its employees; or

(E) rendered other outstanding service related to the above.

(2) Meritorious Service Award.

This is the second highest form of recognition for employees within the Agency. It is granted for outstanding or exceptional contributions to the FLRA. The award consists of a FLRA Meritorious Service Award certificate and a pin. Nominees must have accomplished their duties in an exceptional manner over an extended period of time of not less than one year, similar to the types of performance described for the Distinguished Service Award above.

(3) Exemplary Career Service Award.

This is the third highest form of recognition for employees within the Agency. It is granted for performance that substantially exceeds the requirements of an employee's position over a period of time of not less than one year.

(4) Length-of-Service Awards.

(A) Employees are eligible for length-of-service awards with the U.S. Government upon completion of the required years of service. All Federal career service which is creditable for leave accrual purposes shall be considered for eligibility purposes. Length-of-service awards for all creditable Federal service are in the form of a certificate and a suitable emblem and are awarded upon completion of 1, 3, 5, 10, 20, 30, 40 and 50 years of service.

(B) Awards for service with the U.S. Government are automatic and usually presented by the employee's supervisor within a reasonable period of time after the appropriate anniversary date. The HRD obtains the certificates and emblems and furnishes them to the immediate supervisors for presentation on a timely basis.

(C) The Chairman, FLRA, for Authority Office employees, the General Counsel for Office of General Counsel employees, and the Chairman, FSIP, for FSIP employees will sign the certificates for employees within their respective organizations.

(5) Office of General Counsel's Steve Thoren Award.

The Steve Thoren Award is given in memory of Steve Thoren, who served the FLRA as an attorney, Dispute Resolution Specialist, and in several capacities as a Union representative. It is an annual honor which is awarded to an OGC employee whose actions promote the values and leadership that Steve demonstrated throughout his FLRA service. Nominations are solicited from all OGC employees, and the recipient is determined by a Committee composed of two OGC management representatives and two OGC representatives from the UAE. A plaque is displayed in a prominent place in OGC headquarters which includes the names of each year's recipient.

(6) Letters of Appreciation and Commendation.

Letters of appreciation and commendation provide a means for supervisors to officially recognize unusual work performance or a special act or service by persons who may or may not be employees of the FLRA.

Copies of letters of appreciation and commendation to FLRA employees should be forwarded to the Human Resources Division to be placed on the nonpermanent side of the employee's OPF.

(7) Recognition upon Retirement.

Each retiring employee will receive a plaque or other recognition upon retirement. The Chairman, FLRA, for Authority Office employees, the General Counsel for Office of General Counsel employees, and the Chairman, FSIP, for FSIP employees will sign the certificates for employees within their respective organizations.

(8) Informal Recognition Awards (Mementos Program).

(A) This is an award or memento for a contribution of lesser scope than defined for other awards in this section and that would otherwise go unrecognized. Management is responsible for recommending and approving these awards. Informal recognition awards/mementos are not to be used as a substitute for cash awards (such as special act or on-the-spot awards), if one of those types of awards is more appropriate recognition for the contribution being recognized.

(B) Requirements: The award/memento given must be: of nominal value; commensurate with the value of the service being rewarded; of an appropriate form for use in the public sector and for the use of public funds; and acknowledged in a presentation, however informal.

(C) Human Resources maintains an inventory of mementos for agency-wide use, as the budget permits.

J. Evaluation

This awards program will be reviewed and evaluated periodically by a joint committee of labor and management. This instruction can be "reopened" for negotiation after the first effective year.

K. Effective Date

This Instruction is effective 6.29.12

Sonna Stampone
FLRA Executive Director

AWARD CATEGORY	AWARD/AMOUNT	CRITERIA	APPROVAL AND PROCESSING
Monetary Awards - Performance Based			
Ratings- Based Performance Award Award pool – subject to availability of funds GS employees, by component 1% min up to 2% aggregate GS Salaries & including locality pay.	Cash payment to employee: • Level 3 –Fully Successful - Up to 1% of base salary & locality pay • Level 4 – Exceeds fully Successful - up to 2% of base salary & locality pay • Level 5 – Outstanding - up to 3% of base salary & locality pay	Must be justified in writing. • Ratings based – fully successful or higher. • Performance/accomplishments in routine areas of responsibility excelled in terms of quality, quantity or timeliness. • Performed over & above routine responsibilities & overcame obstacles/barriers when necessary. • Took initiative, willingly contributed additional effort above & beyond responsibilities to assist the organization & employees in the office. • Exemplified professionalism & excellence in meeting goals or improved the efficiency & effectiveness of the office.	• Authority & Authority Members • FSIP – FISIP Chairman • OGC - General Counsel • HR processes award
Quality Step Increase	• Increase in rate of basic pay from one step or rate to the next higher step of that grade or rate within the grade • Printed certificate.	Must be justified in writing. • Performance rating reflects a summary rating of outstanding. • Performance exceeds expectations in all critical elements. • A performance is sustained over 52 weeks. • A performance is expected to continue into the future.	• Authority - Chairman FSIP – FSIP Chairman • OGC - General Counsel • HR processes award
Monetary Awards			
Distinguished Peer Award	• $500 • Printed certificate	Must be justified in writing. • New & creative work methods • Doing more with less • Serving as a highly positive team player, improving morale • Actively assisting other staff in addition to regular duties. • Eligible Employees – non-supervisors/managers	• Peer submits nomination to nominee's supervisor for initial approval. • Approved nominations are be submitted to the Labor Management

AWARD CATEGORY	AWARD/AMOUNT	CRITERIA	APPROVAL AND PROCESSING
			Forum for selection. • HR processes award
Special Act or Service Awards	• $500 • $750 • $1,000 • $1,500 • Printed certificate	Must be justified in writing. • Special contribution or accomplishment in the public interest. • Contribution either within or outside of job responsibilities. • Contributions which significantly exceed an employee's regular duties and responsibilities. • Contributions which yield exemplary results	• Employee's supervisor and manager and component head. • HR processes award
On- the- Spot Awards	$100 to $250	Must be justified in writing. • For a special act or service • Designed to provide immediate recognition • For exceptional contributions that benefit agency operations • Provides recognition for extra work assignments or one time achievement	• Employee's supervisor and manager and component head. • HR processes award
Non-monetary Awards			
Time-off-from-duty	Excused absence granted without charge to leave or loss of pay: • Full time employees may be granted up to 40 hours per year. • No more than 80 hours may be granted in a performance year.	Must be justified in writing. • Granted as an incentive or recognition for superior accomplishment, productivity gain or other personal effort that contributes to the efficiency, economy or improvement of Government operations. • In recognition of a special act or high quality performance. • Related to official employment. • Limitations for part time employee (see instruction).	• Employee supervisor and manager, and component head • Awards in excess of 40 hours must be approved by the FLRA Executive Director. • HR processes award
Non-monetary – Honorary Awards			
Distinguished Service Award	• Certificate • Pin • Plaque	Must be justified in writing. • Highest form of recognition within the Agency. • Acknowledges career oriented achievement. • Accomplished duties in an exceptional manner.	• FLRA Chairman • HR processes award

AWARD CATEGORY	AWARD/AMOUNT	CRITERIA	APPROVAL AND PROCESSING
		• Improved methods and procedures. • Responsible for inventions accomplishing extraordinary results for FLRA or Federal Government. • Exhibited great courage and voluntary risk of personal safety, beyond the call of duty. • Rendered outstanding service.	
Meritorious Service Award	• Certificate • Pin	Must be justified in writing. • Second highest form of recognition within the Agency. • Nominees must accomplish their duties in an exceptional manner over an extended period of time of not less than a year. • Similar to accomplishments described for the distinguished service award.	• FLRA Chairman • HR Processes award
Exemplary Career Service Award	• Certificate • Pin	Must be justified in writing. • Third highest form of recognition within the Agency. • Performance substantially exceeds the requirements of the employee's position over a period of time, not less than one year.	• FLRA Chairman • HR processes award
Length-of-Service Award	• Certificate • Emblem	Awards are automatic, no justification is required. Employees are eligible for length-of-service awards upon completion of creditable years of services as follows: • 1 year, • 3 years, • 5 years, • 10 years, • 20 years, • 30 years, • 40 years, and • 50 years.	• No approval required • Award is automatically processed by HR Presented by: • Authority – Chairman • FSIP – FSIP Chairman • OGC – General Counsel
Steve Thoren OGC Award	• Plaque displayed	• Awarded to OGC employee whose actions promote the	• Committee composed of

AWARD CATEGORY	AWARD/AMOUNT	CRITERIA	APPROVAL AND PROCESSING
	in OGC Headquarters with name of recipient	values and leadership that Steve Thoren demonstrated throughout his FLRA service.	two OGC management representatives and two OGC UAE representatives
Letters of Appreciation and Commendation	• Letter of Appreciation or Commendation	• Performance or special act or service by persons who may or may not be an FLRA employee. • Copies of letters of appreciation and commendations for HFLR employees should be forwarded to HR to be placed in the employee's OPF.	• Supervisors • Copy provided to HR
Recognition upon Retirement	• Plaque • Other recognition • Certificate signed by employees	• Each retiring employee will receive recognition upon retirement.	Authority – Chairman FSIP – FSIP Chairman OGC – General Counsel
Non-monetary – Informal Recognition			
Award/Mementos Program	• Memento • Other forms of informal recognition • Acknowledged in a presentation however informal.	Written justification • For contribution of lesser scope than defined for other awards. • Not to be used as a substitution for cash awards. • Award/memento must be of nominal value. • Commensurate with the value of the service rewarded. • Appropriate for the public sector and for the use of public funds.	• Management • Inventory of Mementos are maintained in HR and subject to budgetary limitations.

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF POLICY AND PERFORMANCE MANAGEMENT
WASHINGTON, DC

INSTRUCTIONS
FLRA 6130.1

SUBJECT: FEDERAL LABOR RELATIONS AUTHORITY OFFICE OF THE INSPECTOR GENERAL INVESTIGATION AND HOTLINE COMPLAINT REQUIREMENTS

TABLE OF CONTENTS

E. **POLICIES.**

1. Federal Labor Relations Authority employees (and associated contractors) having knowledge of the existence of fraud, waste, abuse, mismanagement or any condition that adversely affects or could adversely affect Federal Labor Relations Authority operations have the responsibility to report such matters to their supervisor or the Inspector General. Federal Labor Relations Authority management is responsible for creating an environment that encourages individuals to make their complaints known without fear of reprisal or retaliation.

2. Federal Labor Relations Authority employees are encouraged to attempt resolution of problems through their management chain prior to filing a complaint with the Federal Labor Relations Authority Inspector General. This is not, however, a pre-requisite for seeking Inspector General assistance.

3. When a complaint concerns subject matter that specifically relates to grievances of an individual, the complainant will be referred to the appropriate Federal grievance processes which are listed below. Inquiry into such individual matters is not within the authority of the Federal Labor Relations Authority Inspector General unless the established process has been completed and the complainant alleges that the process was administratively incorrect or inequitably administered. Federal processes with established grievance systems include:

   a. Personnel Appraisal and Merit Promotion

   b. Equal Employment Opportunity

   c. Labor-Management Relations

4. The Federal Labor Relations Authority Inspector General will take necessary precautions to protect the anonymity and confidentiality of the complainant, if so requested, to the maximum extent possible. If the individual's identity cannot be kept confidential, the Federal Labor Relations Authority Inspector General will notify the individual prior to the removal of confidentiality.

5. Subject to part E.3.of this Instruction, the Federal Labor Relations Authority Inspector General will hear concerns and complaints initiated by employees and contractors without prior approval of any level of management. The Federal Labor Relations Authority Inspector General will begin all discussions with an explanation of the Federal Labor Relations Authority Inspector General process, an explanation of rights to confidentiality and non-retaliation, and advise the complainant of exceptions to the confidentiality of Federal Labor Relations Authority Inspector General investigation and active records. Complaints will be resolved at the lowest management level practicable. Issues found to be as systemic will be brought to the attention of the Chairman, FLRA and executive management (the Members, General Counsel and Chairman of the Panel) as appropriate. Corrective actions will be

effected at all appropriate levels in a responsive and timely manner. Federal Labor Relations Authority Inspector General follow-up will be conducted on a periodic basis until corrective actions are complete.

6. Investigations performed by the Federal Labor Relations Authority Inspector General as a result of an employee's assistance request will be performed in a manner that ensures impartiality and confidentiality. The Federal Labor Relations Authority Inspector General, or appointed or contracted personnel, conducting inquiries and activities, internal and external to the Agency may make direct contact with witnesses and be given access to all documents and information relevant to the issue of inquiry. Conclusions must be based on a preponderance of evidence. The results of all Federal Labor Relations Authority assistance requests will be documented in a report of the Federal Labor Relations Authority Inspector General. Federal Labor Relations Authority Inspector General Hotline related investigations will be conducted in such a manner as to avoid the disruption of agency operations.

7. If, during the course of the investigation, sufficient evidence verifies a criminal action, the Federal Labor Relations Authority Inspector General will terminate the investigation and turn the matter over to the Federal Bureau of Investigation or the Department of Justice after notifying the Chairman of the Federal Labor Relations Authority of the circumstances.

8. Federal Labor Relations Authority personnel who perceive that they have been victims of reprisal or a retaliatory personnel action as a result of seeking Inspector General assistance should immediately contact the Federal Labor Relations Authority Inspector General who will specifically handle whistle blower reprisal claims resulting in adverse personnel actions. An immediate inquiry into the alleged retaliatory action shall be initiated as soon as possible. In the alternative, employees may file a disclosure with the Disclosure Unit of the Office of Special Counsel.

9. The Federal Labor Relations Authority Chairman, Authority Members, General Counsel, Federal Services Impasses Panel Chairman, other Presidential Appointees, FLRA management and employees, and Federal Labor Relations Authority contractors may request the assistance of the Federal Labor Relations Authority Inspector General to inquire into any issue deemed important or of sufficient seriousness to impact FLRA operations. Such issues may or may not have evolved from previous Federal Labor Relations Authority Inspector General investigations, internal reviews or audits. Pursuant to complaints filed with the Federal Labor Relations Authority Inspector General, investigations may be conducted simultaneously or seriatim. The Federal Labor Relations Authority Inspector General has the authority to determine that a complaint does not require an investigation. However, care will be taken not to intermingle actions, to maintain objectivity and independence, and to minimize disruption to agency operations.

10. Federal Labor Relations Authority personnel should use the attached form for documenting a request for assistance from the Federal Labor Relations Authority

Inspector General. Unless anonymous, all complainants will receive written acknowledgment of their complaint and the results of investigation, once completed. As previously stated, the Federal Labor Relations Authority Inspector General has the authority, after a preliminary assessment, to decline to act on a complaint that is determined to be inconsequential to mission or operational effectiveness. Should this happen, the complainant will be notified.

11. The Federal Labor Relations Authority Inspector General shall ensure that all preliminary assessments and investigations necessary to resolve a complaint are conducted within 120 days of receipt of the complaint. Should it be necessary to extend this time period because of unusual circumstances, the complainant will be notified in writing.

12. All Federal Labor Relations Authority Inspector General investigations will be conducted in a fair and impartial manner with due respect for those people involved so that all facts can be addressed and determined. Evidence will be gathered and reported in an unbiased and objective manner and support all the facts developed to prove or disprove an issue. The Federal Labor Relations Authority Inspector General will conduct investigations in accordance with quality standards promulgated by the Inspector General Council on Integrity and Efficiency.

F. **RESPONSIBILITIES.**

1. The Inspector General is responsible for:

   a. Ensuring that a viable Inspector General Investigation and Hotline Program is maintained.

   b. Conducting objective, independent Federal Labor Relations Authority Inspector General investigations involving the resources, programs and operations of the FLRA in response to allegations made through the Inspector General Investigation Program and Hotline Program for complaints.

   c. Preparing policies and procedures, guidance and training, as needed, on the Inspector General Assistance Program and use of the Federal Labor Relations Authority Hotline Program. The Federal Labor Relations Authority Inspector General will conduct periodic discussions and/or interviews with management and employees, as needed or requested, to proactively address systemic issues and concerns before they become mission impacting problems.

   d. Being accessible, to the maximum extent, to all FLRA employees and contractor employees. The Federal Labor Relations Authority Inspector General will implement and promote systems and programs which encourage voluntary disclosure of issues relating to fraud, waste, abuse, and mismanagement of Federal resources and programs.

e. Reporting expeditiously to the FLRA Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

f. Granting request for confidentiality from the complainant. If it becomes essential for the complaint's confidentiality to be removed, the Inspector General of the Federal Labor Relations Authority must contact the complaint and explain why confidentiality must be removed prior to it being removed.

2. FLRA Management is responsible for:

a. Creating an environment with "an open door policy" at all management levels through which employees have an accessible channel to communicate issues, concerns or complaints without fear of reprisal or retaliation.

b. Fully understanding that all personnel have the right to seek Inspector General assistance with or without management knowledge and promoting the Federal Labor Relations Authority Inspector General function as a management tool and mechanism of proactive problem prevention and resolution.

c. Addressing the correction of issues substantiated by Federal Labor Relations Authority investigations in an expedient and proactive manner.

3. Federal Labor Relations Authority Employees are responsible for:

a. Reporting instances of fraud, waste, abuse and mismanagement immediately to their supervisor or to the Federal Labor Relations Authority Inspector General.

b. Fully and promptly cooperating with the Federal Labor Relations Authority Inspector General including granting requests for interviews, briefings and documentation.

c. Ensuring that the allegations presented to management and the Federal Labor Relations Authority Inspector General are valid, supportable by evidence and not misrepresentations. Any employee who knowingly makes false representations may be subject to disciplinary action.

G. **COMPLAINTS**.

1. Filing. Any person with knowledge of potential fraud, waste, abuse or mismanagement may file a complaint in person, by mail, e-mail, and fax or over the telephone, as follows:

   a. Individuals may speak with a member of the Federal Labor Relations Authority Office of Inspector General by coming in person to the Federal Labor Relations Authority Inspector General Office located in Room 250; 1400 K. Street, N.W., Washington, D.C. 20424; or by calling (202) 218-7744 for an appointment or discussion on the telephone.

   b. Written complaints may be mailed to--

      Office of Inspector General
      Federal Labor Relations Authority
      1400 K Street, NW, 2nd Floor Room 250
      Washington, D.C. 20424

   c. Written hotline complaints may be e-mailed to the Federal Labor Relations Authority Inspector General at feichl@flra.gov.

   d. Complaints may be faxed to the Federal Labor Relations Authority's Inspector General at (202) 482-6573.

   e. Com plaints may be telephoned to the Federal Labor Relations Authority Office of Inspector General at (202) 218-7744 or 202 218-7755.

Any written submission may be marked "Private, To Be Opened By Inspector General Only," if so desired.

2. Content. In order for the complaint to be properly evaluated, as much information as possible should be provided. Written complaints should be provided in the attached format. Verbal complaints should include the following information:

   a. A brief, accurate statement of those facts believed to provide evidence of wrongdoing relating to fraud, waste, abuse, and mismanagement.

   b. The identity of persons or entities involved, including names and addresses, or office locations;

   c. All relevant date(s), time(s), and place(s) of the suspected or potential wrongdoing;

   d. Pertinent documents or other proof that will support the complaint; and

e. Names, telephone numbers, and addresses of other witnesses who may have information relating to the suspected or potential wrongdoing.

H. **PROCEDURES**.

1. Unless a request is submitted anonymously, all complaints filed with the Federal Labor Relation's Authority Inspector General and Hotline Requests normally are acknowledged in writing within five business days of receipt.

2. Investigations resulting from Federal employees' assistance requests and Hotline calls will be performed by the Federal Labor Relations Authority Inspector General in accordance with policy and procedures enumerated in FLRA Instruction 6110.1, and follow investigation standards promulgated by the President's Council on Integrity and Efficiency.

3. Preliminary and or regular Federal Labor Relations Authority Inspector General investigations will normally be completed within 120 days of receipt of a complaint. If additional time is warranted by extraordinary circumstances, the complainant will be notified in writing and provided an estimated completion date.

a. Confidentiality. The Federal Labor Relations Authority Inspector General shall not, upon receipt of a complaint or Hotline information from an employee, disclose the identity of the employee without the consent of the employee, unless the Federal Labor Relations Authority Inspector General determines that such disclosure is unavoidable during the course of the investigation. Should disclosure become necessary, the Federal Labor Relations Authority Inspector General will inform the complainant in advance?

b. Anonymity. Individuals may also remain anonymous when filing either a written or verbal complaint. Anonymity may, however, hinder an investigation. If the Federal Labor Relations Authority Inspector General needs further information and is unable to contact the complainant, the investigation may have to end or be delayed.

c. Freedom from Reprisals. Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not take or threaten to take any adverse action against any employee as a reprisal for making a complaint or disclosing information to the Federal Labor Relations Authority Inspector General unless the complaint or information was provided with the knowledge that it was false or with willful disregard for its truth or falsity. Any employee who believes reprisal actions have been or are being taken should immediately inform the Federal Labor Relations Authority Inspector General at 202 218-7744.

d. Union Representation. Upon request, employees in a bargaining unit have the right to meet with the Federal Labor Relations Authority Inspector General with

their union representative during interviews with the Federal Labor Relations Authority Inspector General.

e. Appeal and Rebuttal. Nothing in this Instruction should be interpreted to deprive any employee of any right that the employee has pursuant to negotiated agreements or other documented administrative procedures.

This Instruction is effective 7/15/ **2009**

Sonna Stampone

Sonna Stampone, Acting Executive Director
Office of the Executive Director

ATTACHMENT 1

This form should be filled out by the Complainant to the Federal Labor Relations Authority Inspector General and will be kept in the investigation records.

INSPECTOR GENERAL ACTION REQUEST		
Privacy Act Statement ***The Inspector General Act of 1978 authorizes collection of this information.*** ***PRINCIPAL PURPOSE Used to insure just thorough and timely resolution and response to complaints or requests. ROUTINE USES, Data provided are furnished to supervisors, commanders or inspectors to accomplish resolution of complaints and response to queries, The last 4 digits of the SSN are necessary to make positive identification of you and your records 9:5 DISCLOSURE IS VOLUNTARY: Failure to provide the information and SSN will not adversely affect you but may hamper the investigation officer if resolving your complaint.***		
LAST NAME-FIRST NAME-MIDDLE INITIAL	GRADE	SSN (last 4 digits)
ORGANIZATION	OFFICE SYMBOL	JOB TITLE
TO:	SPECIFIC ACTION REQUESTED	
FACTS PERTAINING TO THIS REQUEST *(Use additional sheets if necessary, list enclosures if applicable)*		

The above facts are submitted for the basic purpose of requesting assistance, correcting injustices affecting individuals, or eliminating conditions considered detrimental to the efficiency or reputation of the FLRA. I fully understand that I am accountable for knowingly making untruthful malicious or libelous statements.		
DATE	FEDERAL LABOR RELATIONS AUTHORITY INSPECTOR GENERAL CONTACT	HOME PHONE
MAILING ADDRESS *(Include ZIP Code)*		OFFICE PHONE
FILE REFERENCE	LAST NAME OF COMPLAINANT AND ORGANIZATION	DATE RECEIVED
FACTS DETERMINED		
ACTION TAKEN		
NOTIFICATION TO COMPLAINANT		
DATE NOTIFIED	BY WHOM (Name, Grade and Title)	TELEPHONE NUMBER
I (am) (am not) satisfied with the response given. I have been advised that I may obtain additional review by submitting a request to the Inspector General at FLRA providing rationale and reasons for the need for further review.		
DATE:	Complainant Signature:	
DATE:	Inspector General Signature:	

Federal Labor Relations Authority

OFFICE OF THE EXECUTIVE DIRECTOR WASHINGTON, D.C.

SUBJECT: FLRA Internet Access

FLRA INSTRUCTION 6920

SECTION 1. GENERAL PROVISIONS

A. PURPOSE. This Instruction governs the use of the Internet by Federal Labor Relations Authority (FLRA) employees, unpaid volunteers and contractor representatives assigned to the FLRA. It sets forth permitted and prohibited practices while accessing the Internet using agency resources or facilities and while otherwise representing the FLRA on the Internet.

B. REFERENCES. References and hypertext links to the references are contained in Appendix A.

C. SCOPE.

1. This Instruction applies to information viewed, posted, downloaded, uploaded or exchanged through the agency's Internet access services, or when representing the FLRA on the Internet. Excluded from coverage is the proper use of agency electronic mail, whether Internet or internal, issues related to the use of electronic signatures, and agency policy concerning electronic mail documents that constitute official records under the Federal Records Act of 1950. These issues will be the subject of separate agency guidance.

2. All persons accessing the Internet through FLRA hardware or software are considered representatives of the FLRA and are governed by this Instruction.

D. BACKGROUND.

The Internet is a collection of thousands of computer networks linked by a common set of technical protocols which make it possible for the users of any one of the networks to communicate with, or use the services located on, any of the other networks. Electronic mail permits each FLRA employee to send an electronic message with or without attachments to any other FLRA employee and to anyone with an Internet e-mail address.

Capabilities such as these can provide enormous benefit to the agency, which depends upon a wide variety of support, technical and professional skills to carry out its activities.

E. DEFINITIONS.

Browser	A software tool used to locate and view data in a standardized format on computers, usually on other computers being accessed through the Internet.
Data Encryption	A technique whereby plain text is scrambled in such a way that the original information is no longer readable or decipherable, but which through decryption can later be restored for use. The purpose is to prevent any but the intended recipient from reading that text. This capability exists in some software used during transmission across the World-Wide Web to protect the privacy of the information being transmitted (such as a social security number or credit card number).

Employee	An FLRA employee, unpaid volunteer or contractor representative assigned to the FLRA.
Freeware	Software offered via the Internet or otherwise that is free of charge.
Internet	A global collection of thousands of computer networks linked by a common set of technical protocols which make it possible for the users of any one of the networks to communicate with, or use the services located on, any of the other networks.
Internet Service Provider	A company which provides other companies or individuals with access to, or presence on, the Internet through a telecommunications link.
Network Server	A local area network (LAN) based computer serving the LAN as a whole, as opposed to a personal computer (PC) serving an individual connected to the LAN. Unless your PC has multiple hard disk, floppy disk, CD-ROM, DVD-ROM or ZIP drives, drive designators higher than D: usually indicate storage space on a network server.
Pirated Software	Software obtained or used without a usage license or explicit approval of the developer.
Push Technology	A model of media distribution where items of content are sent to the user (viewer, listener, etc.) in a sequence, usually through a "channel," and at a rate determined by the server to which the user has connected. This contrasts with pull technology where the user requests each item individually.
Shareware	Software, offering a minimal subset of capabilities or otherwise being date limited, that is available at no charge or very little cost.
World-Wide Web (WWW)	The collection of web pages which are developed in accordance with the hypertext markup language (HTML) format standard, accessible on network servers via Internet connections using a WWW browser as a graphical user interface.

SECTION 2. POLICY.

A. INTERNET USAGE. The agency promotes the effective, efficient, ethical and legal utilization of the Internet to acquire information which will enable employees to achieve the agency's mission. The FLRA encourages and facilitates its authorized employees to develop strong Internet user skills and knowledge. Individuals may use the Internet to do their work; to improve their job knowledge; to access legal, technical, labor/management relations, and other general information on topics which have relevance to the agency; to communicate with peers in other government agencies, or private industry; and to discover innovations which may improve job performance.

B. INTERNET ACCESS.

1. Internet access is provided to all FLRA employees as an information tool in the performance of their duties. The FLRA may limit or revoke Internet or e-mail use for violations of this policy or other agency Instructions. Employees should be aware that they have no expectation of privacy while using any Government-provided access to the Internet. The FLRA provides the Internet browser software and it may have access to the software and information contained within it whenever it has a legitimate Governmental purpose for doing so.

2. Employees may use the Internet to complete work assignments, to stay current on career-related topics, to improve their job-related knowledge, skills and abilities,

to communicate with associates and experts in legal, technical, administrative and employee and labor-management relations fields, and other Government-related fields, and to plan and manage official travel.

C. REVIEW OF INTERNET USAGE.

1. The use of Government-provided equipment to access the Internet may be subject to review by appropriate agency officials. Management reviews may be conducted to determine whether the costs of the service are justified by the benefits derived, and whether this Instruction is being properly applied. If the agency elects to conduct an overall study of Internet usage by FLRA employees, notice and an opportunity to participate in the study will be provided to the Union of Authority Employees.

2. Technical computer support staff may review information concerning the use of equipment to ascertain whether the network hardware and software are functioning properly, and whether or not cost savings can be achieved by altering network configurations, traffic patterns or hours of availability.

D. PERMITTED PRACTICES. Internet users are permitted to engage in the following activities:

1. Accessing job-related information;

2. Participating in work-related news and e-mail discussion groups;

3. Searching or browsing the Internet for topics of interest related to the user's job with the agency and downloading such information, subject to limitations described below;

4. Engaging in limited personal use of Government equipment is permitted, if the use does not interfere with official business and involves minimal additional expense to the Government. This limited personal use should not interfere with the performance of any work duties by any FLRA employee. This limited personal use of Government office equipment may be revoked or limited at any time by FLRA management, consistent with this Instruction and the personal use policy developed by the Federal Government's Chief Information Officers (CIO) Council (See Appendix A, reference 7). This policy in no way limits agency personnel in the use of Government office equipment including information technology for official activities.

E. PROHIBITED PRACTICES. Internet users are not permitted to engage intentionally in the following activities when using agency-provided Internet access:

1. Accessing, retrieving, or printing text and graphics, video, audio information, etc., in violation of the Principles of Ethical Conduct For Government Officers and Employees (See Appendix A, references 4 and 5). Examples include, but are not limited to: abusive, harassing, obscene, profane, intimidating or offensive language or messages, pornography, gambling, participating in pyramid or other fraudulent schemes, and unauthorized alteration or destruction of agency or Internet data resources or systems.

2. Engaging in personal commercial business activities at any time using agency resources. See CIO policy (Appendix A, reference 7) and Principles of Ethical Conduct For Government Officers and Employees (Appendix A, references 4 and 5).

3. Engaging in any activity which would compromise the security of any Government computer. Computer account ID's, user ID's, passwords, network ID's, etc., may not be disclosed or shared with other users within or outside the agency. See FLRA Computer Security Policies and Procedures, (Appendix A, reference 8).

4. Using unauthorized computer account ID's, user ID's, passwords, and network ID's. Passwords are assigned for exclusive use by an individual or group. Use of

such passwords by any other party is considered unauthorized. Use of ID's to access employee personal accounts is authorized consistent with all other provisions of this Instruction.

5. Using or disclosing confidential or sensitive information not intended for consumption or use outside the agency or outside the FLRA component.

6. Downloading, installing, or playing computer-based games on agency computers or when using agency-provided Internet access or services.

7. Knowingly developing or executing programs designed to infiltrate or plant viruses in agency or Internet systems.

8. Using agency provided resources or agency-provided Internet resources for personal reasons, except as consistent with the limited personal use allowed by this Instruction, the FLRA Electronic Mail Instruction, and the FLRA Computer Security Policies and Procedures. See CIO policy (Appendix A, reference 7).

9. Installing personal software on agency computers without permission, or otherwise installing software in violation of software licensing agreements. See Computer Security Policies and Procedures (Appendix A, reference 8).

10. Obtaining and using unauthorized copies of software. See Computer Security Policies and Procedures (Appendix A, reference 8).

11. Creating personal home pages through the use of or on agency-provided Internet facilities.

12. Subscribing, purchasing, or otherwise obligating agency funding for any product or service without express supervisory approval. Employees are responsible for the payment of unauthorized purchases.

13. Using push technology through agency-provided Internet access without the prior written approval of the IRM Division, consistent with the procedures set forth in FLRA Computer Security Policies and Procedures (Appendix A, reference 8).

14. Engaging in inappropriate or prohibited activities as identified in section IV.C., Inappropriate Personal Uses, of the CIO Limited Personal Use Policy (Appendix A, reference 7).

15. Engaging in other activities which would discredit the Federal Labor Relations Authority or the Federal Government.

SECTION 3. RESPONSIBILITIES.

A. RESPONSIBILITIES OF SUPERVISORS. FLRA supervisors are responsible for determining appropriate versus inappropriate use of Internet access. Supervisors are to consult with the IRM Division when appropriate concerning the appropriate use of network server storage space, the use of non-FLRA software or hardware and other issues related to Internet use. Supervisors may propose appropriate disciplinary action for employees engaged in any of the prohibited practices established in this Instruction, consistent with FLRA Instruction 3752, Employee Discipline and Adverse Action.

B. RESPONSIBILITIES OF INTERNET USERS.

1. Video files, voice files and certain graphics and other files may take up significant storage space on servers or other agency computers. A server may malfunction when most of its storage space is used up. While large files may be downloaded from the Internet when they serve a job-related purpose, employees should notify the supervisor and the IRM Division Help Desk whenever, in the employee's

judgment, a large number or volume of files is to be downloaded. This could avoid a situation where downloaded files jeopardize or paralyze the use of an agency network or network server.

2. Software available on the Internet, such as freeware, shareware, or software offered on a trial basis, may not be downloaded through agency-provided Internet access or onto agency computers without IRM Division approval consistent with procedures set forth in FLRA Computer Security Policies and Procedures (Appendix A, reference 8). If such software is of use to agency operations, it may be approved for loading if it is consistent and compatible with the agency's overall software configuration and life cycle plan. Pirated software, including shareware, is prohibited in all cases.

3. Internet users are responsible for an awareness and understanding of the Internet environment, particularly as it relates to scams, security and unvalidated and uncensored information.

(a) Security of information. Users should be aware that communications over the Internet are not always secure. Devices can be used to intercept and read information transmitted. Also, deceptive practices may exist on the Internet.

(b) Scams. When encryption software is not used, any communication over the Internet is subject to being viewed by persons other than intended. Because communications over the Internet are not secure, users should be aware of possible Internet scams or fraudulent transactions. An e-mail message or attachment can be printed by its recipient and should therefore be regarded as "on the record" and attributable to the originator and the FLRA.

(c) Invalidated and Uncensored Information. A significant amount of information on the Internet is neither validated nor censored. The FLRA cannot guarantee the accuracy, currency, or completeness of information obtained through Internet e-mail. The user is responsible for discerning and avoiding information, whether text, graphics or video, etc., inappropriate for agency use as stated in the prohibited practices section of this Instruction. Agency users are prohibited from intentionally accessing Internet sites that may contain offensive material or result from receipt of e-mail messages containing inappropriate content. See Principles of Ethical Conduct For Government Officers And Employees (Appendix A, references 4 and 5).

4. Users are responsible for familiarizing themselves with this Instruction and for adhering to its guidelines.

SECTION 4. USER AWARENESS.

A. All employees are reminded that use of the Internet, including personal use, is a privilege. Therefore, the Internet should only be used in accordance with the conditions outlined in this Instruction. Employees engaged in any of the prohibited practices stated above may be subject to disciplinary action, consistent with FLRA Instruction 3752, Employee Discipline and Adverse Action.

B. Internet users should be aware of the possibilities of inadvertently downloading files which may contain a virus. Files ending in ".exe" are typically used to transmit viruses and could contain a new strain of virus undetectable by anti-virus software that resides on the FLRA computer network.

SECTION 5. AGENCY REPRESENTATION.

Any employee speaking or distributing information may be perceived to be representing the FLRA. It is the responsibility of employees to ensure that they are not giving the false impression that they are acting in an official capacity when they are using Government office equipment for non-Governmental purposes. If there is expectation that such a personal use could be interpreted to represent the agency, then an adequate disclaimer must be used. One acceptable disclaimer is: "The contents of this message are mine personally and do not reflect any position of the Government or my agency." See CIO Policy (Appendix A, reference 7). The Standards of Ethical Conduct for Employees of the Executive Branch state: "...an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities..." (5 CFR Section 2635.702(b)), (Appendix A, reference 9).

SECTION 6. TECHNICAL ASSISTANCE AND POLICY ADVICE.

A. Technical assistance concerning the use of the Internet browser software available on user workstations, Internet-related issues, network access, computer virus or other computer security issues, may be obtained from the IRM Help Desk, at (202) 482-6555, or in headquarters by pressing the "Feature" button and dialing 724.

B. Policy questions concerning this Instruction should be addressed to the Director, Information Resources Management Division.

C. This Instruction is effective on June 9, 2000.

Solly Thomas
Executive Director

Appendix A. References.

1. Computer Security Act of 1987, PL 100-235, 101 Stat. 1724 (40 U.S.C. 759 Note).
http://www.cio.gov/documents/computer_security_act_jan_1998.html

2. Clinger-Cohen Act of 1996 (Division E of P. L. 104-106) ("Information Technology Act").
http://www.cio.gov/Documents/it%5Fmanagement%5Freform%5Fact%5FFeb%5F1996%2Ehtml

3. Executive Order 13011, "Federal Information Technology," dated July 17, 1996.
http://www.cio.gov/Documents/federal%5Fit%5FJul%5F1996%2Ehtml

4. Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989.
http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12674.html

5. Executive Order 12731, Principles of Ethical Conduct for Government Officers and Employees, dated October 17, 1990.
http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12731.html

6. Federal Information Processing Standards Publication (FIPS) 112.
http://www.itl.nist.gov/fipspubs/fip112.htm

7. The Federal Government's Chief Information Officers (CIO) Council Limited Personal Use Policy dated March 17, 1999, and references therein.
http://cio.gov/Documents/peruse_model_May_1999.pdf

8. FLRA Computer Security Policies and Procedures.
file:///R:/INTERNET/Library/Tech/security_old.htm

9. Standards of Ethical Conduct for Employees of the Executive Branch.
http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12834

Federal Labor Relations Authority

OFFICE OF THE EXECUTIVE DIRECTOR WASHINGTON, D.C.

SUBJECT: FLRA Electronic Mail

FLRA INSTRUCTION 6910

SECTION 1. GENERAL PROVISIONS

A. PURPOSE.

This Instruction governs use of the FLRA electronic mail systems by Federal Labor Relations Authority (FLRA) employees, unpaid volunteers and contractor representatives assigned to the FLRA. It sets forth permitted and prohibited practices while accessing the electronic mail system (e-mail) using agency resources or facilities and while otherwise representing the FLRA via electronic mail.

B. REFERENCES.

References and hypertext links to the references are contained in Appendix A.

C. SCOPE.

1. This Instruction applies to information viewed, sent, received, posted, downloaded, uploaded or exchanged through the agency's electronic mail services, while using agency resources or facilities or when representing the FLRA using electronic mail. This policy does not distinguish between electronic mail usage during normal agency business hours and usage outside of regular business hours (i.e., mornings, evenings or weekends). Excluded from coverage is the proper use of agency Internet access, issues related to the use of electronic signatures and agency policy concerning electronic mail documents that constitute official records under the Federal Records Act of 1950. These issues will be the subject of separate agency guidance.

2. All persons accessing internal or external e-mail through FLRA hardware or software are considered representatives of the FLRA and are governed by this Instruction.

D. BACKGROUND.

Electronic mail permits each FLRA employee to send an electronic message with or without attachments to any other FLRA employee and to anyone with an Internet e-mail address. The Internet is a collection of thousands of computer networks linked by a common set of technical protocols which make it possible for the users of any one of the networks to communicate with, or use the services located on, any of the other networks. Capabilities such as these can provide enormous benefit to the agency, which depends upon a wide variety of support, technical and professional skills to carry out its activities.

E. DEFINITIONS.

Employee - An FLRA employee, unpaid volunteer or contractor representative assigned to the FLRA.

SECTION 2. POLICY.

A. ELECTRONIC MAIL COMMUNICATIONS.

1. An e-mail system is a communication tool. Its primary purpose is to enhance communication between the FLRA, its customers, its employees and the general public in order to further the agency's mission. The FLRA promotes the effective, efficient, ethical and legal utilization of the e-mail system to acquire and to share information to accomplish the agency's mission.

2. Employees may use e-mail, both internally and externally, to complete work assignments, to stay current on career-related topics, to improve their knowledge, skills and abilities, and to communicate with associates and experts in professional, technical and administrative fields.

3. E-mail access is provided to all FLRA employees as an information tool in the performance of their duties. The FLRA may limit or revoke Internet or e-mail use for violations of this policy, other agency Instructions, or any other law, rule or regulation. Employees should be aware that they have no expectation of privacy while using any Government-provided access to internal or Internet e-mail. The FLRA provides the e-mail access software and it may have access to the software and information contained within it whenever it has a legitimate Governmental purpose for doing so.

4. Electronic mail messages must be approved for general dissemination. The following officials may approve, for their respective offices, e-mail messages for general agency-wide, component-wide, or general external dissemination.

(a) Chairman, Authority Members, General Counsel (GC), and Federal Service Impasses Panel (FSIP) Chair.

(b) FLRA Executive Director, Executive Director of the FSIP, Deputy General Counsel, Director of Operations and Resources Management (GC), Chief Counsels, Solicitor, Chief Administrative Law Judge, Regional Directors, Director, Office of Case Control, Director, Office of Collaboration and Disputes Resolution, Inspector General, Director, Budget and Finance Division, Director, Human Resources Division, Director, Information Resources Management Division, and Director, Administrative Services Division; and any other staff member designated by the Chair, Authority Member, General Counsel or FSIP Chair.

5. REVIEW OF E-MAIL USAGE.

(a) The use of Government-provided equipment to send and receive mail messages and information may be subject to review by appropriate agency officials. Management reviews may be conducted to determine whether the costs of the service are justified by the benefits derived, and whether this Instruction is being properly applied. If the agency elects to conduct an overall study of e-mail usage by FLRA employees, notice and an opportunity to participate in the study will be provided to the Union of Authority Employees.

(b) Technical computer support staff may review information concerning the use of equipment to ascertain whether the network hardware and software are functioning properly, and whether or not cost savings can be achieved by altering network configurations, traffic patterns or hours of availability.

B. PERMITTED PRACTICES. The e-mail system may be used for authorized communications

directly related to the business activities of the FLRA, and as a means to further the agency's mission by exchanging information or providing services that are efficient, complete, accurate, and timely. E-mail users are permitted to engage in the following activities:

1. Communicating, sending and receiving job-related information, as needed, to meet the requirements of their jobs. However, if employees are restricted from providing information to outside sources in the course of their duties, these same restrictions apply to the use of e-mail. Guidance concerning disclosure of information is provided to employees by each FLRA component, as necessary.

2. Participating in news, list servers (which periodically send information), and e-mail discussion groups, provided these sessions and services have a relationship to the user's job with the agency.

3. Searching or browsing the Internet for topics of interest related to the user's job with the agency, and adding one's e-mail address to a list for subsequent receipt of information. (However, see restrictions below concerning server storage space.)

4. Engaging in limited personal use of Government equipment is permitted, if the use does not interfere with official business and involves minimal additional expense to the Government. This limited personal use should not interfere with the performance of any work duties by any FLRA employee. This limited personal use of Government office equipment may be revoked or limited at any time by FLRA management, consistent with this Instruction and the personal use policy developed by the Federal Government's Chief Information Officers (CIO) Council (See Appendix A, reference 7). This policy in no way limits agency personnel in the use of Government office equipment including information technology for official activities.

C. PROHIBITED PRACTICES. Employees are not permitted to engage in the following activities, using agency equipment or facilities, or when using agency- provided electronic mail:

1. Accessing, retrieving, or printing text and graphics, video, audio information, etc., in violation of the Principles of Ethical Conduct For Government Officers and Employees. (See Appendix A, references 4 and 5.) Examples include abusive, harassing, obscene, profane, intimidating or offensive language or messages; pornography; software piracy; gambling; participating in pyramid or other fraudulent schemes; and unauthorized alteration or destruction of agency or Internet data resources or systems.

2. Engaging in personal commercial business activities at any time using agency resources. See CIO policy (Appendix A, reference 7) and Principles of Ethical Conduct For Government Officers And Employees (Appendix A, references 4 and 5).

3. Engaging in any activity which would compromise the security of any Government computer. Computer account ID's, user ID's, passwords, and network ID's, etc., may not be disclosed or shared with other users within or outside the agency. See FLRA Computer Security Policies and Procedures (Appendix A, reference 8).

4. Using unauthorized computer account ID's, user ID's, passwords, and network ID's. Passwords are assigned for exclusive use by an individual or group. Use of such passwords by any other party is considered unauthorized. Use of ID's to access employee personal accounts is authorized consistent with all other provisions of this Instruction.

5. Using or disclosing confidential or sensitive information not intended for consumption or use outside the agency or outside the FLRA component.

6. Downloading, installing, or playing computer-based games on agency computers or when using agency-provided e-mail systems.

7. Knowingly developing or executing programs designed to infiltrate or plant viruses in agency or Internet systems.

8. Using agency provided resources or agency-provided Internet resources for personal reasons, except as consistent with the limited personal use allowed by this Instruction, the FLRA Internet Access Instruction, and the FLRA Computer Security Policies and Procedures (Appendix A, reference 8). See CIO policy (Appendix A, reference 7).

9. Installing personal software on agency computers without permission, or otherwise installing software in violation of software licensing agreements. See FLRA Computer Security Policies and Procedures (Appendix A, reference 8).

10. Obtaining and using unauthorized copies of software. See FLRA Computer Security Policies and Procedures (Appendix A, reference 8).

11. Subscribing, purchasing, or otherwise obligating agency funding for any Internet- related product or service without express supervisory approval. Employees are responsible for the payment of unauthorized purchases.

12. Engaging in inappropriate or prohibited activities as identified in section IV.C. of the CIO Limited Personal Use Policy (See Appendix A, reference 7).

13. Engaging in other e-mail activities which would discredit the Federal Labor Relations Authority or the Federal Government.

SECTION 3 - RESPONSIBILITIES.

A. RESPONSIBILITIES OF SUPERVISORS.

FLRA supervisors are responsible for determining appropriate versus inappropriate use of the e-mail system. Supervisors are to consult with the IRM Division when appropriate concerning the appropriate use of network server storage space, the use of non-FLRA software or hardware and other issues related to e-mail use. Supervisors may propose appropriate disciplinary action for employees engaged in any of the prohibited practices established in this Instruction, consistent with FLRA Instruction 3752, Employee Discipline and Adverse Action.

B. RESPONSIBILITIES OF ELECTRONIC MAIL USERS.

1. Video files, voice files and certain graphics and other files may take up significant storage space on servers or other agency computers. A server may malfunction when most of its storage space is used up. While large files may be downloaded from the Internet when they serve a job-related purpose, employees should notify the supervisor and the IRM Division Help Desk whenever, in the employee's judgment, a large number or volume of files is downloaded. This could avoid a situation where downloaded files jeopardize or paralyze the use of an agency network or network server.

2. Software available on the Internet, such as freeware, shareware, or software offered on a trial basis, may not be downloaded through agency-provided e-mail or onto agency computers without IRM Division approval consistent with procedures set forth in FLRA Computer Security Policies and Procedures (See Appendix A, reference 8). If such software is of use to agency operations, it may be approved for loading if it is consistent and compatible with the agency's overall software configuration and life cycle plan. Pirated software, including shareware, is prohibited in all cases.

3. E-mail users are responsible for an awareness and understanding of the e-mail environment, particularly as it pertains to security, scams and invalidated and

censored information.

(a) Security of information. Users should be aware that communications over the Internet are not always secure. Devices can be used to intercept and read information transmitted. Also, deceptive practices may exist on the Internet.

(b) Scams. When encryption software is not used, any communication over the Internet is subject to being viewed by persons other than intended. Because communications over the Internet are not secure, users should be aware of possible Internet scams or fraudulent transactions. An e-mail message or attachment can be printed by its recipient and should therefore be regarded as "on the record" and attributable to the originator and the FLRA.

(c) Invalidated and Uncensored Information. A significant amount of information on the Internet is neither validated nor censored. The FLRA cannot guarantee the accuracy, currency, or completeness of information obtained through Internet e-mail. The user is responsible for discerning and avoiding information, whether text, graphics or video, etc., inappropriate for agency use as stated in the prohibited practices section of this Instruction. Agency users are prohibited from intentionally accessing Internet sites that may contain offensive material or result in receipt of e-mail messages containing inappropriate content. See Principles of Ethical Conduct for Government Officers and Employees (Appendix A, references 4 and 5).

4. E-mail users are responsible for familiarizing themselves with this Instruction and for adhering to its guidelines.

SECTION 4. USER AWARENESS.

A. All employees are reminded that use of the e-mail system, including personal use, is a privilege. Therefore, the e-mail system should only be used in accordance with the conditions outlined in this Instruction. Employees engaged in any of the prohibited practices stated above may be subject to disciplinary action, consistent with FLRA Instruction 3752, Employee Discipline and Adverse Action.

B. E-mail users should be aware of the possibilities of inadvertently receiving attachments which may contain a virus. Files ending in ".exe" are typically used to transmit viruses and could contain a new strain of virus undetectable by anti-virus software that resides on the FLRA computer network.

SECTION 5. AGENCY REPRESENTATION.

Any employee speaking or distributing information may be perceived to be representing the FLRA. It is the responsibility of employees to ensure that they are not giving the false impression that they are acting in an official capacity when they are using Government office equipment for non-Governmental purposes. If there is expectation that such a personal use could be interpreted to represent the agency, then an adequate disclaimer must be used. One acceptable disclaimer is: "The contents of this message are mine personally and do not reflect any position of the Government or my agency."

See CIO Policy (Appendix A, reference 7). The Standards of Ethical Conduct for Employees of the Executive Branch state: "...an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities..." (5 CFR Section 2635.702(b)), (Appendix A, reference 9).

SECTION 6. INFORMATION AND TECHNICAL ASSISTANCE

A. Technical assistance concerning the use of electronic mail software available on user workstations, electronic-mail issues, network access, computer virus or other computer security issues, may be obtained from the IRM Help Desk, at (202) 482-6555, or in headquarters by pressing the "Feature" button and dialing 724.

B. This Instruction is effective on May 31, 2000.

Solly Thomas
Executive Director

Appendix A. References.

1. Computer Security Act of 1987, PL 100-235, 101 Stat. 1724 (40 U.S.C. 759 Note).
http://www.cio.gov/documents/computer_security_act_jan_1998.html

2. Clinger-Cohen Act of 1996 (Division E of P. L. 104-106) ("Information Technology Act").
http://www.cio.gov/Documents/it%5Fmanagement%5Freform%5Fact%5FFeb%5F1996%2Ehtml

3. Executive Order 13011, "Federal Information Technology," dated July 17, 1996.
http://www.cio.gov/Documents/federal%5Fit%5FJul%5F1996%2Ehtml

4. Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989.
http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12674.html

5. Executive Order 12731, Principles of Ethical Conduct for Government Officers and Employees, dated October 17, 1990.
http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12731.html

6. Federal Information Processing Standards Publication (FIPS) 112.
http://www.itl.nist.gov/fipspubs/fip112.htm

7. The Federal Government's Chief Information Officers (CIO) Council Limited Personal Use Policy dated March 17, 1999, and references therein.
http://cio.gov/Documents/peruse_model_May_1999.pdf

8. FLRA Computer Security Policies and Procedures.
file:///R:/INTERNET/Library/Tech/security_old.htm

9. Standards of Ethical Conduct for Employees of the Executive Branch.
http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12834.html

INJURY COMPENSATION

Table of Contents

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3861

June 4, 1984

SUBJECT: INJURY COMPENSATION

SECTION 1 - GENERAL PROVISIONS

1. PURPOSE. This regulation implements Chapter 810 of the Federal Personnel Manual providing information on the reporting of and compensation for job-related injuries and occupational diseases.

2. POLICY.

   a. Federal Labor Relations Authority (FLRA) employees will receive prompt medical treatment and full assistance will be provided in claiming just compensation from the Office of Workers' Compensation (OWCP) for job-related injuries and occupational diseases.

   b. Employees with job-related disabilities who are unable to perform previously assigned duties will be considered for assignment to duties for which they are qualified, and which they are capable of performing.

3. SCOPE AND COVERAGE.

   a. The Federal Employees' Compensation Act provides monetary compensation, medical care and assistance, vocational rehabilitation, and reemployment rights to

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OPI: OP

Federal employees who sustain disabling injuries as a result of their employment with the Federal Government. The Act also provides for the payment of funeral expenses and for compensation benefits to qualified survivors of the decedent in cases of employment-related death. The compensation program is conducted under laws and regulations administered by OWCP, U.S. Department of Labor.

b. All employees of FLRA, regardless of the tenure of their employment, are covered by the provisions of the Federal Employees' Compensation Act.

4. REFERENCES.

FPM Chapter 810; Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101; and Title 20.

5. RESPONSIBILITIES.

a. The Director of Personnel is responsible for ensuring that:

(1) supervisors are advised in each separate geographical location of the Federal medical facilities available for the care of employees injured in the course of their official duties;

(2) injured employees, their dependents, and parties acting on their behalf are counseled concerning the procedures for submitting claims;

(3) FLRA offices are provided with a supply of compensation act forms;

(4) on behalf of supervisors, CA-Forms 3, 4, 5, 5b, 6, 7, 8, 16, 17, and 20 are initiated;

(5) Compensation Act reports and claims are processed;

(6) cooperation is provided to supervisors in arranging suitable work assignments for employees upon return to duty from an absence

due to an on-the-job injury; and

(7) accident reports are received and processed.

b. Supervisors will:

(1) assure that employees are oriented in safety practices and that they observe safe working habits;

(2) provide healthful and safe work areas;

(3) assure that employees receive prompt medical care for injuries sustained on the job;

(4) notify the Office of Personnel immediately of any injury sustained on the job by an employee under their supervision; and

(5) complete the necessary reporting forms promptly. Failure or refusal to properly file required reports can result in a fine, imprisonment, or both. Supervisors are required to initiate their part of CA-Forms 1, 2, 2a, and 16. The original of these forms are to be submitted immediately to the Office of Personnel after completion. Supervisors should give high priority to this area of concern.

(6) advise the employee of the right to elect continuation of regular pay or use annual or sick leave, if the injury is disabling.

(7) inform the employee whether continuation of pay will be controverted, and if so, whether it will be terminated, and the basis for this action.

c. Employees will:

(1) observe safety rules;

(2) report all injuries to their supervisors immediately;

(3) report to appropriate medical facilities for treatment without delay; and

(4) complete the necessary reporting forms promptly. Such forms may be completed by someone acting in the employee's behalf.

SECTION 2 - BENEFITS.

1. MEDICAL CARE. An injured employee is entitled to all necessary medical care including transportation to such care. The medical care, if possible, is to be provided by a fully licensed physician or hospital of the employee's choice. One exception to medical care is that OWCP will not pay for any preventive treatment.

2. DISABILITY BENEFITS. Federal employees who suffer disabilities that are causally related to employment are eligible for one or more of several types of wage loss compensation. Disability benefits are classified on the basis of the nature and extent of disability incurred, and are defined as temporary total disability, permanent total disability and temporary/permanent partial disability.

3. CONTINUATION OF PAY. The Federal Employees' Compensation Act (FECA) provides 45 days continuation of regular pay for an employee who sustains a work-related traumatic injury. A day, or portion of a day, spent by an injured employee in a light duty job within the first 45 days of disability following an injury shall be counted as one day of Continuation of Pay (COP). This would also include any day any day or portion of a day during which the employee's regular job was specifically altered to accommodate injury-related work restrictions imposed by a physician.

If, during the 45 day period, the treating physician indicates the employee is able to return to work and the employee refuses to do so, the continued absence from work may result in an overpayment. The FLRA should submit the medical evidence of ability to work (CA-17) to OWCP and an explicit statement of the light duty job which was offered to the employee, along with its

physical requirements and documentary evidence of the offer, as evidence that entitlement to continued pay may be terminated under this section.

a. Temporary Total Disability - Traumatic Injury

(1) An employee sustaining a disabling, job-related traumatic injury is entitled to continuation of regular pay for a period not to exceed 45 calendar days. This will not be construed to require a person's continued employment beyond the date it would have terminated had the employee not been injured. Any absence, for all or portion of the workday, while disabled or while seeking treatment, is counted as a day of continuation of pay.

(2) Employees are not entitled to continuation of regular pay for traumatic, job-related injury and continuation of pay will be controverted, when:

(a) the disability is the result of an occupational disease or illness;

(b) the employee falls within the exclusion of 5 U.S.C. 8101(1)(B) or (E) – that is, persons rendering services to the United States for no pay or for nominal pay;

(c) the employee is a foreign national employed outside the United States or Canada;

(d) the injury occurred off the employing agency's premises and the employee was not involved in official off-premises duties;

(e) the injury was caused by the employee's willful misconduct, intent to injure, or intoxication;

(f) the injury was not reported on Form CA-1 within 30 calendar days following the injury;

(g) work stoppage first occurred 6 months or more following the injury;

(h) the employee initially reported the injury after the employee's employment had terminated; or

(i) the employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs or other similar groups.

(3) When continuation of pay for traumatic injury is allowed, it must not be interrupted until:

(a) the expiration of 45 calendar days;

(b) receipt of medical information from the attending physician indicating that the employee is no longer disabled; or

(c) receipt of notification from OWCP to terminate it.

b. Permanent Total Disability. An injured employee sustaining permanent total disability is entitled to compensation during his lifetime unless medically or vocationally rehabilitated. The amount of compensation is 75 percent of the employee's pay if he/she has one or more dependents (66 & 2/3 percent if there are no dependents) provided the amount payable does not exceed 75 percent of the monthly pay of a GS-15, step 10. When the services of an attendant are required, an additional sum up to $500 per month may be allowed for this purpose.

c. Temporary/Permanent Partial Disability.

(1) An injured employee may receive compensation computed on the loss of wage-earning capacity when the employee is partially disabled and unable to return to his/her employment because of injury.

(2) Compensation will be paid as long as there is a loss of wage earning capacity. Compensation will not exceed 75 percent of the monthly pay of a GS-15, step 10.

(3) Scheduled Awards - Compensation is provided for specific periods of time for the loss of certain members and bodily functions.

(4) Compensation not to exceed $3,500 may be paid for the serious disfigurement of the face, head, or neck if the injury is of a character likely to handicap a person in securing or maintaining employment.

4. COMPENSATION.

a. In a traumatic injury, compensation for loss of wages is payable after a 3-day waiting period following expiration of the 5 calendar days of continuation of pay. In a non-traumatic injury case, compensation for loss of wages is payable after an initial 3-day waiting period. In either event, no waiting period is required when there is a permanent disability of where the disability causing wage loss exceeds 14 days from the time compensation begins.

b. An injured employee with one or more dependents is entitled to receive 75 percent of his/her pay (66 & 2/3 if there are no dependents) provided the amount payable does not exceed 75 percent of the monthly pay of a GS-15, step 10.

c. Compensation may not be paid while an employee is on leave. The employee has the right to elect whether to receive pay for leave (annual or sick) or to receive compensation. The employee must be in a Leave-Without-Pay (LWOP - wage losing) category before he/she can be paid compensation.

5. BUY-BACK LEAVE.

a. An employee may decide to take paid leave to avoid possible interruption of income. An employee electing to take paid leave may subsequently elect compensation coverage and buy back the leave used.

b. The amount of money the employee will be required to pay will depend on several factors such as the length of the period of disability and the amount of Federal income tax which is withheld from leave pay. OWCP provides a statement, upon request, to the employee and the Agency finance office computes/completes the buy-back cost and notifies OWCP of the transaction. The employee must refund to the Agency, the amount of leave paid for the period involved. The amount necessary to buy back the leave used, may be reduced by the amount of compensation paid by OWCP, if that compensation is paid directly to the FLRA.

c. When buy-back leave is accomplished, the period of time the leave was used is converted to LWOP and the rules and regulations governing LWOP apply.

6. DEATH BENEFITS.

a. Burial - A sum not to exceed $800 may be paid for funeral and burial expenses. An additional sum is allowable for transportation of the deceased employee who dies away from his/her home station. An additional sum of $200 is paid to the personnel representative of the decedent's status as an employee of the United States Government.

b. Survivor's Compensation

(1) When there are no children entitled to compensation, the employee's widow or widower may receive compensation equal to 50 percent of the employee's pay until death or remarriage. Remarriage on or after the age of 60 will not affect the receipt of compensation. Remarriage before the age of 60 will halt the payment of compensation but the surviving spouse will be paid a lump sum equal to 24 times the monthly

compensation.

(2) When there is a child entitled to compensation, the compensation for the widow or widower will equal 45 percent of the employee's pay plus 15 percent for each child, but no more than 75 percent of the employee's pay. A child is entitled to compensation until he or she dies, marries, or reaches 18 years of age, or, if over 18 and incapable of self-support, becomes capable of self-support. If an unmarried child is a student when reaching 18 years of age, compensation may be continued for as long as the child remains a student or until he or she marries. It may not, however, be continued beyond the end of the semester or enrollment period after the child reaches 23 years of age or has completed four years of school beyond the high school level.

7. ELECTION BETWEEN RETIREMENT ANNUITY AND EMPLOYEES' COMPENSATION.

Generally, employees, or their survivors, may election to receive either retirement or survivor annuity under the Civil Service Retirement System, or compensation from OWCP, whichever is more advantageous. Exceptions to this general rule will be reviewed in the context of Federal Personnel Manual Supplement 831-1, subchapter 7.

SECTION 3 - PROCEDURES

1. EMPLOYEE'S NOTICE OF INJURY.

a. An injured employee, or someone acting on the employee's behalf, must give written notice of the injury to the employee's supervisor as soon as possible but not later than 30 days after the injury. Notice will be made on Form CA-1 or on Form CA-2, as appropriate.

b. When an injury comes to the attention of a supervisor, the supervisor will give the employee Form CA-1 or Form CA-2, as appropriate, and direct

the employee to give notice of the injury on the front of the form. When notice of the injury is completed by the employee, the supervisor must complete the receipt on the bottom of the instruction sheet attached for the form and give it to the employee. This form is then forwarded to the Office of Personnel.

c. Statements should also be obtained from any witnesses and submitted with Form CA-1 or Form CA-2 when possible.

2. REPORT OF INJURY BY SUPERVISOR.

a. The supervisor must prepare a written report of injury if:

(1) The injury causes disability from the employee's usual work beyond the shift in which it occurred; or

(2) the injury will result in a charge for medical or other related expenses.

b. The supervisor's report of injury is to be made on Form CA-1 or Form CA-2, as appropriate. The report should be submitted to the Office of Personnel, and will then be forwarded to OWCP if either situation defined in a. above pertains. If a report of injury to OWCP is not required, the completed Form CA-1 or CA-2 will be made a permanent part of the employee's official personnel file.

3. AUTHORIZING EXAMINATION AND TREATMENT.

a. When an employee sustains an injury in the performance of duty, the supervisor will immediately authorize examination and the appropriate medical Form CA-16, Request for Examination and/or Treatment, should be issued to a United States medical officer or hospital, or any duly qualified physician or hospital of the employee's choice.

b. Medical care may be provided by Federal medical

officers and hospitals when available and their use is practicable. The injured employee has the right to select a local, duly qualified, private physician or hospital within a 25 mile radius of the employee's home. Federal Health Service units or other occupational health service facilities established under the provisions of 5 U.S.C. 7901 are not Federal medical officers and hospitals for the purpose of this regulation.

c. In cases of traumatic injury where emergency treatment is necessary, the employee may contact the nearest qualified physician or hospital for initial treatment. If oral authorization for the treatment is issued by the employee's supervisor, Form CA-16 must be issued within 48 hours thereafter.

4. MEDICAL REPORTS.

All cases reported to OWCP require that OWCP be furnished with an immediate medical report from the attending physician. This report may be made on Part B of Form CA-16, CA-20, CA-20a, or by a narrative report on the physician's letterhead stationery. Employees will be provided with a Form CA-17 (Duty Status Report) at the time the injury is reported to the Office of Personnel. The Office will be kept continually apprised of the Status of the employee's injury, by the Physician, from the point of onset.

5. HEALTH INSURANCE.

a. An employee retains health insurance coverage (including coverage for any covered family members) if the employee:

(1) has been enrolled (or covered as a family member) in a plan under the Federal health benefits program for the five years of service immediately preceding the start of compensation, or during all service since his/her first opportunity to enroll, or continuously for the full period or periods of service beginning with the enrollment which became effective no later

than December 31, 1964;

(2) is receiving compensation as described in this regulation; and

(3) is determined to be able to return to duty by the Secretary of Labor.

b. The employee is responsible for paying the employee's share of health benefits coverage during the receipt of compensation as during any time of nonpay status. The OWCP will make withholdings for the employee from compensation for any period of compensation 29 days or more. After 365 days in nonpay status, the employee may elect to convert to an individual policy or have coverage transferred to OWCP if not already transferred.

6. LIFE INSURANCE.

a. An employee retains basic life insurance (not accidental death and dismemberment) without cost if the employee:

(1) on the day insurance would otherwise terminate, is in receipt of benefits under the Federal Employees' Compensation law and held by the Department of Labor to be unable to return to duty;

(2) does not convert to an individual policy; and

(3) has been insured under the FEGLI program for the five years of service immediately preceding the date he or she becomes entitled to benefits under the Federal Employees' Compensation law or the full period(s) of service since the employee's first opportunity to be insured, if less than 5 years.

b. The employee is required to pay for any optional insurance he/she wishes to continue during receipt of compensation for any period of compensation for 29 days or more. For periods of Compensation for 29

days or more, OWCP will make withholdings beginning with the first day of the pay period following the one in which withholdings from pay ceases.

c. After completion of 12 months of nonpay status, the employee may elect to convert to an individual policy or apply to OPM for continuation of FEGLI coverage during receipt of compensation at the cost stated above.

7. TERMINATION OF DISABILITY.

Immediately upon the return to duty of an employee after absence caused by an on-the-job injury or occupational disease, the supervisor will complete the appropriate section of Form CA-3, Report of Termination of Disability and/or Payment. The report will be forwarded to the Office of Personnel and in turn forwarded to OWCP.

8. RECURRENT OF DISABILITY.

If an employee suffers a recurrence of disability and again stops work, the supervisor will notify the Office of Personnel. The appropriate CA forms will be forwarded to OWCP by the Office of Personnel. In traumatic injury cases, if the original 45-day entitlement period has not been exhausted and less than six months have expired since the employee returned to work after the initial disability, the employee may elect continuation of regular pay instead of sick or annual leave.

SECTION 4 - CLAIMS FOR COMPENSATION

1. TIME LIMITS.

a. Notice of Injury or Death - Supervisors must be provided written notice of job-related injury or death within 30 days of the incident. The report may be made by the injured employee or by someone acting on behalf of the injured or deceased employee. Failure to report injuries or deaths may jeopardize benefit rights.

b. Filing with OWCP - The injured employee, or someone

acting on behalf of an injured or deceased employee, is required to file a written claim for compensation within 3 years after the injury, before compensation can be paid. If the supervisor had actual knowledge of the injury within 30 days, or if written notice was given within 30 days, compensation is allowed regardless of whether a written claim is made within three years after the injury.

c. Exceptions - The time limits do not apply to:

(1) a minor until attaining the age of 21 or until a legal representative is appointed;

(2) an incompetent during the period of incompetency when there is no duly appointed legal representative; or

(3) an employee whose failure to comply is excluded on the grounds that notice could not be given because of exceptional circumstances.

2. TRAUMATIC INJURY CLAIMS.

a. Where disability continues beyond 45 calendar days, the employee and supervisor must complete and file OWCP Form CA-7 not later than 5 working days after the end of the 45-day period to ensure continuity of benefits.

b. Employees may have the right to be represented by a union official or other person on any matter pertaining to an injury or death occurring in the performance of duty.

c. Form CA-7 mus be accompanied by a medical report (see Section 3-4, above) showing continued disability for work beyond the end of the 45-day period. Form CA-7 and the medical report should be forwarded directly to the appropriate OWCP office handling the claim.

3. OCCUPATIONAL DISEASE CLAIMS.

a. Form CA-4 should be filed with OWCP within 10 calendar days after pay stops or when disability terminates if the pay loss is less than 10 days.

b. Form CA-4 must be accompanied by a medical report (see Section 3-4, above) showing the disability. Form CA-4 and the medical report should be forwarded directly to the appropriate OWCP district office handling the claim.

c. Employees may elect to use sick or annual leave pending adjudication of the claim by OWCP.

4. CONTINUING DISABILITY CLAIMS.

a. When temporary total disability continues, Form CA-8 must be submitted every 2 weeks at the discretion of OWCP, until the employee is otherwise instructed by OWCP.

b. Form CA-8 must be accompanied by a medical report (see Section 3-4 above) showing continued disability for work. Form CA-8 and the medical report should be forwarded directly to the OWCP office having jurisdiction over the claim.

5. CASES INVOLVING LIABILITY OF A THIRD PARTY.

The OWCP has the right to be reimbursed from damages recovered in any case of injury or death caused under circumstances creating a legal liability upon someone other than the United States. No person claiming compensation should attempt to settle a third party claim arising out of an injury or death without first obtaining advice and approval from the Solicitor of Labor (obtain from the Associate Counsel for Employees' Compensation, Washington, D.C. 20210). In all cases for this kind, the supervisor should advise claimants of these requirements.

6. HEARINGS.

A claimant who is not satisfied with an OWCP decision may ask for a hearing before an OWCP representative. The request for a hearing must be made to the Director of the

OWCP within 30 days after the decision. At the hearing, which will be held at a location convenient to both the claimant and the OWCP, the claimant may present evidence in further support of the claim. After the hearing, OWCP will issue a new decision.

7. RECONSIDERATION.

A claimant may ask OWCP to reconsider any determination made by one of its offices. No special form is required to request this reconsideration, but the request must be addressed to the Director of the OWCP in writing and must state clearly the ground upon which it is based. It must also be accompanied by evidence not previously submitted, such as new medical reports or new statements and affidavits. There is no time limitation within which a request for reconsideration must be filed.

8. APPEALS.

a. A claimant may ask the Employees' Compensation Appeals Board to review final decisions by OWCP. To file an appeal, the claimant should write to the Employees' Compensation Appeals Board, United States Department of Labor, Washington, D.C. 20210; a Form AB-1 is provided for this purpose to ensure furnishing necessary information. The Board's jurisdiction extends to questions of law and fact; it may also consider exercises of discretion to determine their reasonableness. Its review is based solely upon the case record in OWCP at the time the final determination was made; new evidence is neither received nor considered by the Board.

b. For claimants residing within the continental United States, applications for review by the Board are to be filed within 90 days of the date of the final determination by OWCP. If the claimant resides outside of the continental United States, applications for review by the Board are to be filed within 180 days of the date of the final OWCP determination. For good cause shown, the Board may excuse final OWCP determination. For good cause shown, the Board may excuse failure to timely file

an application for review, if it is filed within one year of the date of the final OWCP determination.

This regulation is effective June 4, 1984.

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Jan K. Bohren
Executive Director/Administrator

APPENDIX A
FORMS

FORMS	TITLE
CA-1	Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.
CA-2	Federal Employee's Notice of Occupational Disease and Claim for Compensation
CA-2a	Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation
CA-3	Report of Termination of Disability and/or Payment
CA-4	Claim for Compensation on Account of Occupational Disease
CA-5	Claim for Compensation by Widow, Widower, and/or Children
CA-5b	Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren
CA-6	Official Superior's Report of Employee's Death
CA-7	Claim for Compensation on Account of Traumatic Injury
CA-8	Claim for Continuing Compensation on Account of Disability
CA-16	Request for Examination and/or Treatment
CA-17	Duty Status Report
CA-20	Attending Physicians's Report
CA-20a	Attending Physician's Supplemental Report

Federal Labor Relations Authority

WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION
FLRA No. 3890.2

REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES	Issue Date: December 16, 2015

Contents

0101. GENERAL PROVISIONS.

101.1. Purpose.

This Instruction describes policies and guidance for the application of reasonable accommodations to job applicants with disabilities, and to employees who have or develop a disabling condition while employed at the Federal Labor Relations Authority (FLRA). This Instruction supersedes FLRA Instruction No. 3890, issued on November 9, 2009.

101.2. Policy.

The FLRA is firmly committed to supporting the principles of equal employment opportunity for both applicants and employees and to ensuring that qualified individuals with disabilities are not discriminated against because of their disability in regard to job-application procedures, hiring, and other terms and conditions of employment. Consequently, the FLRA is prepared to provide reasonable accommodation to:

- Modify or adjust the job-application process or the job or work environment to accommodate known physical or mental limitations of the applicant or employee;
- Enable the applicant to be considered for the position s/he desires;
- Enable the employee to perform the essential functions of her/his position; and
- Enable the employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities, unless the accommodation would impose an undue hardship or pose a direct threat of substantial harm to the health or safety of the applicant, employee, or others.

Once an accommodation is properly requested, the responsibility for fashioning an effective accommodation is shared by the employee/applicant and the FLRA. If the requested accommodation is reasonable and does not result in undue hardship (see Section 103.8), the FLRA has an affirmative obligation to provide an accommodation on a continuing basis until the employee's condition no longer qualifies as a disability or unless providing reasonable accommodation becomes an undue hardship. If more than one accommodation is effective, the preference of the employee should be given primary consideration. However, the FLRA has the ultimate discretion to choose between effective accommodations.

Any FLRA employee or applicant may consult the Reasonable Accommodation Coordinator (RAC) within the Human Resources (HR) Division, or any FLRA supervisor/manager for information or assistance in connection with requesting or processing a request for reasonable accommodation.

101.3. Scope and Coverage.

This document sets forth the policies and procedures applicable to considering and making decisions on requests for reasonable accommodation for employees and applicants with disabilities. It also sets forth the record-keeping requirements for documenting reasonable accommodation requests and the decision process. Finally, this Instruction specifies the procedures used to request and consider medical documentation in cases where the disability and/or the need for accommodation are not obvious.

The provisions of this Instruction cover all FLRA employees and applicants for employment with the FLRA, regardless of the appointment mechanism, who have a disability as defined in Section 103.5 below. The concept of reasonable accommodation applies to all aspects of employment, including, but not limited to, recruitment, hiring, training, promotion, reassignment, and developmental assignments.

101.4. References.

A. The Rehabilitation Act of 1973, as amended (Rehabilitation Act):

1. Section 501, prohibiting discrimination on the basis of disability in federal employment;

2. Section 503, addressing the employment practices of federal contractors;

3. Section 504, covering all programs receiving federal financial assistance; and

4. Section 508, requiring access to the federal government's electronic and information technology.

B. Americans with Disabilities Act of 1990 (ADA), as amended, Title 1, Employment.

C. ADA Amendments Act of 2008, 42 U.S.C. § 12101 note.

D. Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. §§ 2000ff-2000ff-11.

E. Section 717 of Title VII, Civil Rights Act of 1964, prohibiting employment discrimination based on race, color, religion, sex, and national origin.

F. Civil Rights Act of 1991 (Public Law 102-166), amending several sections of Title VII.

G. U.S. Equal Employment Opportunity Commission Management Directive 715, providing policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII (Part A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (Part B).

H. Title 5, Code of Federal Regulations, Part 339, Medical Qualification Determinations.

I. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151-4156.

J. Executive Order 13,164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.

K. Title 29, Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity.

L. Title 29, Code of Federal Regulations, Part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act.

M. Title 29, Code of Federal Regulations, Part 1635, Genetic Information Nondiscrimination Act of 2008.

101.5. <u>Definitions.</u>

A. *Days* are work days unless otherwise noted.

B. *Decision-Maker* is the FLRA official who renders decisions on requests for reasonable accommodation. For employees, this individual is the HR Director or her/his designee, or the employee's immediate supervisor. For applicants, the decision-maker is the HR Director or the HR Specialist that the HR Director designates for the particular vacancy.

C. *Disabled Person* is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

D. *Equal Employment Opportunity* is an opportunity for a qualified individual with a disability to perform the essential job functions or to enjoy the benefits and privileges of employment that are available to similarly situated individuals who are not disabled.

E. *Essential Functions* are those job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function is considered "essential" if: the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized, and the individual is hired based on her/his ability to perform it.

F. *Family Medical History* means information about the manifestation of disease or disorder in family members of the individual.

G. *Family Member* means, with respect to any individual: a person who is a dependent of that individual as the result of marriage, birth, adoption, or placement for adoption; or a relative of the first degree (the individual's parents, siblings, and children), second degree (the individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings), third degree (the individual's great-grandparents, great-grandchildren, great-uncles/aunts, and first cousins), or fourth degree (the individual's great-great-grandparents, great-great-grandchildren, and first cousins once-removed).

H. *Genetic Information* means information about an individual's or family member's genetic tests; the manifestation of disease or disorder in family members of the individual (family medical history); the individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member; and the genetic information of a fetus carried by an individual or an individual's pregnant family member or any embryo lawfully held by the individual or family member using an assisted reproductive technology.

Genetic information is **not** information about: an individual's or family member's sex or age; or an individual or family member's race or ethnicity that is not derived from a genetic test.

I. *Genetic Services* means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

J. *Genetic Test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. A genetic test is **not** an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

K. *Health Care Professional* is a person who is legally competent to diagnose and/or treat the particular medical condition or conditions that are the basis of the accommodation request.

L. *Interactive Process* is a cooperative, constructive and, if necessary, ongoing dialogue between the individual who requests reasonable accommodation and the appropriate FLRA official for the purpose of identifying the nature of the request and effective accommodations.

M. *Major Life Activities* include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense

organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system. The term "major" shall not to be interpreted strictly to create a demanding standard for disability. Whether an activity is a "major life activity" is not determined by reference to whether it is of "central importance to daily life."

N. *Manifestation or Manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. A disease, disorder, or pathological condition is not "manifested" if the diagnosis is based principally on genetic information.

O. *Mental Impairment* is any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

P. *Physical Impairment* is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory (including speech organs); cardiovascular; reproductive; digestive; genitourinary; immune; circulatory; hemic; lymphatic; skin; and endocrine.

Q. *Qualified Individual* is an individual who satisfies the requisite knowledge, skills, abilities, and other job-related requirements of the position and can perform the essential functions of the position with or without reasonable accommodation.

R. *Reasonable Accommodation* may include: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations; training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. Reasonable accommodation normally does not require: providing an employee with a new supervisor; allowing an employee to work at home in circumstances where the essential functions of the job can only be performed at the work site; excusing a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity; excusing past misconduct even if it is the result of the individual's disability; and monitoring whether an employee takes medication as prescribed.

S. *Reassignment* is a form of reasonable accommodation that, absent undue hardship, is provided to employees who, because of a disability, can no longer

perform the essential functions of their job, with or without reasonable accommodation. Reassignment as reasonable accommodation is a last resort measure. Reassignments are made without competition to vacant positions when employees are qualified for the new position.

T. *Record of an Impairment* is a history of, or classification as having, a mental or physical impairment that substantially limits one or more major life activities.

U. *Regarded as Having Such an Impairment* means having a physical or mental impairment that does not substantially limit major life activities, but being treated by an employer as constituting such a limitation; having a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such an impairment; or having none of the impairments defined above, but being treated by an employer as having such a limitation. An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that s/he has been subjected to an action prohibited by the Rehabilitation Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. "Being regarded as having such an impairment" does not apply to impairments that are both transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

V. *Request for Accommodation* is an oral or written statement that an individual needs an adjustment or change at work, or in the application process, for a reason related to a medical condition. Additional information, as appropriate, may be obtained through the interactive process that follows the request.

W. *Requestor* is the applicant for employment or the employee who initiates a request for reasonable accommodation, or a family member, health professional, or other representative acting on the individual's behalf.

X. *Substantially Limits* is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. Substantially limits is not meant to be a demanding standard. An impairment is a disability if it substantially limits an individual's ability to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. The threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis. Each case requires an individual assessment. However, comparing an individual's performance of a major life activity to that of most people in the population will usually not require scientific, medical, or statistical analysis. The determination of whether an impairment "substantially limits" a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses

shall be considered in determining whether an impairment substantially limits a major life activity. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting.

Y. *Undue Hardship* resulting from an action generally means significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation needed; the overall financial resources of the agency; the number of persons employed; the effect of the accommodation on expenses and resources; and the impact of the accommodation on the operation of the agency.

101.6. Responsibilities.

A. Requestors are responsible for:

1. Bringing to the attention of the appropriate decision-maker a need for reasonable accommodation;

2. Participating in the interactive process or designating someone to do so; and

3. Providing the FLRA with sufficient medical documentation in support of requests for reasonable accommodation, when necessary.

B. Decision-Makers are responsible for:

1. Receiving, processing, and documenting reasonable accommodation requests;

2. Consulting with and obtaining guidance from the RAC within the HR Division on all aspects of the reasonable-accommodation procedure;

3. Participating in the interactive process;

4. Approving and providing the accommodation or forwarding the request to the appropriate office for implementation;

5. Meeting stated timeframes for processing and implementing approved accommodation requests;

6. Protecting the privacy of the requestor and the confidentiality of information obtained in the course of the reasonable-accommodation request; and

7. Consulting with the HR Director or her/his designee when accommodation is requested in conjunction with an anticipated or pending performance- and/or conduct-based action.

C. The **Public Health Service Medical Officer** is responsible for:

1. Reviewing and interpreting medical documentation, when necessary, for the purpose of assisting FLRA management in determining whether the individual requesting accommodation is an individual with a disability as defined in these procedures;

2. Communicating with the requestor, her/his representative, and/or her/his health care professional, when required, to clarify specific medical issues regarding a requestor's claim for reasonable accommodation; and

3. When FLRA management deems necessary, providing input to FLRA officials on medically-appropriate and effective accommodations.

D. The **Reasonable Accommodation Coordinator** (RAC) is responsible for:

1. Reviewing all reasonable-accommodation requests to ensure compliance with law and regulation;

2. Advising supervisors, managers, and employees regarding their rights and responsibilities under this Instruction;

3. Establishing mechanisms for monitoring the processing of accommodation requests;

4. Maintaining the confidentiality of all information related to requests for reasonable accommodation;

5. Identifying possible accommodations for applicants and employees;

6. Conferring with the HR Director or her/his designee in situations where performance and/or conduct issues are involved in the reasonable-accommodation process;

7. Seeking guidance and assistance, upon consultation with the HR Director or her/his designee, as needed, from other offices and officials.

8. Maintaining and safeguarding reasonable-accommodation case files in accordance with records-retention requirements;

9. Providing statistical reports with respect to processing requests for reasonable accommodation, as required; and

10. Preparing an annual report in January for the Executive Director on the preceding year's requests for reasonable accommodation. The report will include the disposition of those requests, types of

accommodations implemented, identification of issues that require attention, and recommendations for enhancements to the procedures.

E. **The HR Director or her/his designee** is responsible for:

1. Providing operational support and services to FLRA organizations;

2. Conducting job analyses on vacancies to ensure that the associated knowledge, skills, and abilities are related to the essential functions of the job and that barriers are removed from the hiring process;

3. Addressing requests from applicants for reasonable accommodation during the selection process;

4. Consulting with the RAC and supervisors on situations where performance and/or conduct issues are involved in the reasonable-accommodation process; and

5. Assisting in identifying and implementing accommodation solutions for employees, when needed.

F. The **HR Director** is responsible for:

1. Maintaining overall responsibility for the FLRA's HR programs, policies, procedures, and services, and making changes, when appropriate; and

2. Providing guidance and assistance to all FLRA offices and officials involved in reasonable-accommodation issues, and exercising general oversight of the reasonable-accommodation procedures.

G. The **Executive Director** is responsible for rendering final agency decisions on requests for reconsideration of denials or designating another official to act in this capacity, if warranted.

0102. PROHIBITION AGAINST DISCRIMINATION.

The FLRA is committed to providing a workplace free of discrimination and harassment of any type, including discrimination and harassment based on disability. The need for reasonable accommodation shall not adversely affect an individual's consideration for employment, training, promotion, or opportunity to enjoy equal terms, benefits, privileges, or conditions of employment, including FLRA-supported social or recreational activities. Supervisors, managers, and others involved in the processing and implementation of requests for reasonable accommodation are expected to perform their duties in a manner that fosters a professional and discrimination-free environment, and will be held accountable to maintain such an environment.

0103. PROCEDURES.

103.1. General Guidelines for Requesting Reasonable Accommodation.

A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act."

An individual with a disability may request a reasonable accommodation whenever s/he chooses, even if s/he has not previously disclosed the existence of a disability. Because the concept of reasonable accommodation centers on the needs of applicants and employees with disabilities, it is only within this context that a person's disability may be considered. By contrast, consideration of a person's disability that does not relate to elimination of workplace barriers affecting job performance or the enjoyment of equal employment opportunity is inappropriate.

Reasonable accommodations are addressed in three aspects of employment:

A. Recruitment/Application Process.

A reasonable accommodation is provided in the recruitment process to provide a qualified applicant with a disability an equal opportunity to be considered for the position for which the person applied.

B. Performance of the Essential Functions of a Job.

A reasonable accommodation is provided to enable a qualified person with a disability to perform the essential duties of the job being sought or currently held. This may include modifications or adjustments to the work environment and to the way duties are customarily performed. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

C. Receipt of all benefits of employment.

A reasonable accommodation is provided to enable an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by other similarly situated employees without disabilities. This would include equal access to buildings, conferences, meetings, events, and services related to FLRA business.

103.2. Initiating a Request for Reasonable Accommodation.

A. Employee.

An employee may make a request for reasonable accommodation orally or in writing to her/his immediate supervisor or, in the supervisor's absence, to another supervisor or manager in the employee's chain of command. An employee may also make a request to any FLRA official designated to oversee the reasonable-accommodation process (RAC, HR Director, and Executive Director) or who is proposing to take a performance or conduct action. The request should indicate the specific form of accommodation requested and the basis for such accommodation. Where necessary, the employee may submit additional medical documentation to the RAC in support of the request.

B. Applicant for Employment.

The obligation to provide reasonable accommodation applies to all aspects of the hiring process, including the application and interview processes. All FLRA vacancy announcements must include a statement regarding reasonable accommodation available for applicants during the selection process. An applicant may make a request for reasonable accommodation orally or in writing to any FLRA employee with whom the applicant has contact or to the HR Specialist whose name and telephone number appear on the vacancy announcement. Although an applicant with a disability may request a reasonable accommodation at any time during the application process, the applicant should, to the greatest extent possible, make a request as soon as s/he is aware of a barrier in the process. Accommodation for the interview is the responsibility of the selecting official.

C. Family Member, Health Professional, Immediate Supervisor, or Other Representative.

A request made by such a person on behalf of an employee or applicant shall go to the same person to whom the employee or applicant would make the request. The request may be made orally or in writing. Whenever possible, the decision-maker should confirm with the person with a disability that s/he, in fact, wants a reasonable accommodation.

D. Reasonable Accommodation Request and Record Form.

To enable the FLRA to track the reasonable-accommodation process accurately and efficiently, all requests must be documented on the Reasonable Accommodation Request and Record form (Appendix A). This form may be used by the employee, applicant, or representative to initiate the request. If the request is made orally, the official receiving the request must complete the appropriate areas on the form. For applicants

seeking a reasonable accommodation, the HR Specialist handling the request must either give the applicant(s) the form to complete or complete the form on her/his behalf.

Regardless of who initiates the request, the official who receives the request is ultimately responsible for ensuring that the form is completed and for promptly forwarding a copy of the form to the RAC. While the Reasonable Accommodation Request and Record form should be completed as soon as possible, it is not a requirement for the request itself. The FLRA will begin processing the request as soon as it is made, whether or not the form has been completed. This form will also be used to document management approvals and denials of requested accommodations.

A Request for Reasonable Accommodation form is not required when an individual needs the same type of accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). The form is required only for the first request for a given accommodation, but appropriate notice should be given, where practicable, each time the accommodation is needed.

103.3. <u>Authority to Act on Requests</u>.

The FLRA official responsible for rendering decisions on requests for reasonable accommodation shall be referred to as the "decision-maker" in this Instruction. The HR Director or her/his designee may serve as the decision-maker for any request. Other decision-makers are listed below and will handle the process as follows:

A. The HR Specialist who is assigned to the vacancy will handle requests for accommodation from applicants with disabilities in the application process.

B. The selecting official will handle requests for accommodations from applicants with disabilities for the interview process.

C. The immediate supervisor, or in her/his absence another official with supervisory/managerial responsibility in the employee's chain of command, will handle requests for accommodation from employees with disabilities.

D. The proposing and/or deciding official for a disciplinary or adverse-action notice handles requests for accommodation from employees who have received a notice.

E. The RAC, within the HR Division, in consultation with the FLRA's Public Health Service Medical Officer and other appropriate individuals, handles

requests for determinations as to whether or not applicants or employees requesting accommodation have a covered disability.

Note: All decision-makers must have designated back-ups to continue receiving, processing, and providing reasonable accommodations when the decision-maker is unavailable. Decision-makers should ensure that individuals know who has been designated as back-up. The time frames discussed in Section 103.9, below, will not be suspended or extended because of the unavailability of a decision-maker.

103.4. Engaging in the Interactive Process.

Once the appropriate decision-maker receives a request for reasonable accommodation, the interactive process begins in order to determine what, if any, accommodation should be provided. Communication is a priority throughout the entire process. The decision-maker will explain to the applicant or employee that s/he will be rendering a decision on the request and describe what will happen during the processing of the request. This initial discussion should happen as soon as possible after a request for reasonable accommodation is presented by or on behalf of the employee.

When a third party makes a request for accommodation, the decision-maker should, if possible, confirm with the applicant or employee with a disability that s/he, in fact, wants a reasonable accommodation before proceeding. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the decision-maker will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.

Ongoing communication is particularly important where: the specific limitation, problem, or barrier is unclear; an effective accommodation is not obvious; or the parties are considering different possible accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided are clear, extensive discussions are not necessary. Even so, the decision-maker and requestor should communicate with each other to make sure that there is a full exchange of relevant information. The decision-maker will consult with the RAC and other appropriate officials during the course of the interactive process for advice and guidance. S/he may also utilize various resources to obtain additional information in rendering decisions on the request and appropriate accommodations.

103.5. Determining Whether the Individual Has a Disability.

A. General Evaluation Criteria.

Neither the statutes – the ADA and the Rehabilitation Act – nor the regulations promulgated under these statutes, list all diseases or conditions that make up "physical or mental impairments" because it would be

impossible to provide a comprehensive list, given the variety of possible impairments. An impairment is a "disability" under the ADA and, by extension, the Rehabilitation Act, only if it substantially limits one or more major life activities. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. An individual must be substantially limited in the ability to perform an activity compared to an average person in the general population.

The following factors must be considered in determining whether a person's impairment substantially limits a major life activity:

- Its nature and severity;
- How long it will last or is expected to last; and
- Its permanent or long-term impact, or expected impact.

These factors must be considered because it is not generally the name of an impairment or a condition that determines whether a person qualifies for accommodation. Rather, it is the effect of an impairment or condition on the life of a particular person. Some impairments, such as blindness and deafness, are by their nature substantially limiting. But many other impairments may be disabling for some individuals, but not for others, depending on the impact on their life activities.

Whether an asserted impairment constitutes a disability is a determination that must be made on an individualized, case-by-case basis.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as: medication, medical supplies, equipment, or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics, including limbs and devices; hearing aid(s) and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; learned behavioral or adaptive neurological modifications; or psychotherapy, behavioral therapy, or physical therapy. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

B. Determining When Medical Information is Required.

The accommodation request shall be considered immediately, without the need for further medical documentation, if the individual has an obvious

disability or previously documented medical condition that qualifies her/him as an individual with a disability and the accommodation request is related to the known disability. For example, it may not be necessary for an employee who uses a wheelchair to submit medical information for the reasonable accommodation of raising an office desk or adjusting other furniture in the workspace. Likewise, medical information would not be required from a deaf applicant to have sign language interpreting services provided during an interview.

If the individual does not have an obvious disability or previously documented medical condition that qualifies her/him as an individual with a disability, s/he may be required to provide sufficient and reasonable documentation of her/his medical condition to the RAC, who will determine, in consultation with the Public Health Service Medical Officer, as necessary, whether the requestor is an individual with a disability. The RAC will request relevant supplemental medical information if: (1) the information submitted does not clearly explain the nature of the disability or need for reasonable accommodation; or (2) it does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or enjoy benefits and privileges of the workplace. In the case of an applicant, relevant supplemental medical information may be requested to determine the nature of the disability or how the accommodation will assist with the application process.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits the FLRA from requesting, requiring, or purchasing genetic information of an individual or family member of the individual, except as specifically allowed by the GINA. To comply with the GINA, the FLRA will not seek any genetic information about individuals or their family members and requests that individuals not provide any genetic information when responding to requests for medical information.

Not all information need be medical, as the appropriate information may be received from a social worker or vocational rehabilitation counselor. The documentation received must be sufficient for the RAC to determine whether the requestor is an individual with a disability. In order for appropriate and useful information to be obtained, all requests should describe the nature of the individual's job, the essential functions, and any other relevant information. The RAC and the decision-maker shall consult with the Public Health Service Medical Officer, when necessary, regarding the interpretation of medical documentation.

If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the RAC may request that a physician examine the individual, at the FLRA's expense. The GINA's general prohibition on the acquisition of genetic information, including family medical history, would apply to such an examination. A decision to undergo an

examination is voluntary on the part of the individual. The physician will advise the decision-maker of the individual's relevant medical condition and any additional relevant information about the individual's functional limitations. The failure to provide appropriate documentation or to cooperate in the FLRA's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

103.6. Confidentiality of Medical Information.

Under the Rehabilitation Act, medical information obtained in connection with the reasonable-accommodation process must be kept confidential. Thus, all medical information, including information about functional limitations and reasonable-accommodation needs, that the FLRA obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's Official Personnel Folder (OPF). Medical documents shall be sealed, marked as "Confidential Medical Information," and maintained in secure storage by the RAC.

Under the GINA, the FLRA must maintain the confidentiality of any genetic information that it lawfully obtains about an individual or an individual's family member by keeping that information in a file separate from the individual's OPF. But the FLRA may maintain the genetic information in the same file in which it maintains other confidential medical information about the individual. If the FLRA receives genetic information orally, it need not reduce that information to writing, but it may not disclose that information unless permitted to under the GINA.

Any FLRA employee who obtains or receives such information is strictly bound by these confidentiality requirements. Confidentiality applies to all aspects of the reasonable-accommodation process. The HR Division is responsible for maintaining custody of all medical records obtained or created during the processing of a request for reasonable accommodation and will forward all requests for disclosure of the records to the Executive Director for response. All medical records will be maintained in accordance with the Privacy Act, and information regarding these records, or any aspect of the process, may be disclosed only as follows:

- Supervisors and managers who need to know may be told about the determination of eligibility as an individual with a disability, the necessary restrictions on the work or duties of the employee, and about any recommended accommodations. However, medical information will only be disclosed if strictly necessary.

- First aid and safety personnel may be provided specific medical information, when appropriate, if the disability might require emergency treatment.

- Government officials may be provided information necessary to investigate the FLRA's compliance with the Rehabilitation Act.

- Workers' compensation offices or insurance carriers may receive medical information in certain circumstances, in accordance with EEOC regulations.

- A U.S. Public Health Service Medical Officer may receive medical information when the FLRA is consulting with her/him regarding the interpretation of medical documents.

Whenever information is disclosed, the individual disclosing the information will inform the recipient of the confidentiality requirements, as well as about the requirement to comply with applicable provisions of the Privacy Act. If there is a doubt as to whether to release such information, individuals must contact and obtain guidance from the RAC and the Executive Director before releasing such information. The violation of confidentiality requirements of reasonable-accommodation-medical information is a serious matter and may be grounds for disciplinary or adverse action.

103.7. <u>Aggregate Information Tracking.</u>

The RAC will maintain aggregate records of reasonable-accommodation activity, without individual identifiers, so that the FLRA may track performance relating to the provision of reasonable accommodation. These aggregate records will include the following information, some or all of which may be included in the FLRA's annual report to the EEOC:

- The number and types of reasonable accommodations that have been requested, both granted and denied;

- The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;

- The types of reasonable accommodations that have been requested for each of those jobs;

- The number and types of reasonable accommodations for each job, by agency component, that have been approved, and the number and types that have been denied;

- The number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;

- The reasons for denial of requests for reasonable accommodation;

- The amount of time taken to process each request for reasonable accommodation; and

- The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

103.8. Determining Agency Undue Hardship.

There is no duty to provide reasonable accommodation if the accommodation poses an undue hardship on the FLRA. A determination that a particular accommodation would impose an undue hardship must be based on a case-by-case analysis of current circumstances that shows that a particular accommodation would: cause significant difficulty or expense; be unduly extensive, substantial, or disruptive; or fundamentally alter the nature of FLRA operations. A claim of undue hardship based on fellow employees' fears or prejudices toward the individual's disability is impermissible. Nor can undue hardship be based on the fact that providing a reasonable accommodation might have a negative impact on the morale of other employees. However, undue hardship may be shown where an accommodation would be unduly disruptive to other employees' ability to work. The balance between an accommodation that is reasonable and an accommodation that would cause an undue hardship is usually dependent upon the resources available to the FLRA.

Factors used to make an assessment of undue hardship include:

- The type of FLRA operations, including the composition and structure of the workforce;

- The nature and net cost of the accommodation needed;

- The impact of the accommodation on the ability of other employees to perform their duties; and

- The impact on the FLRA's ability to conduct business.

Determining that a particular accommodation would result in undue hardship does not end the FLRA's obligation to provide accommodation. In this situation, it is necessary to determine whether other effective accommodations exist that could be provided and would not result in undue hardship.

103.9. Time Frames for Processing Requests.

Requests for reasonable accommodation must be processed and provided, where appropriate, in as short a time frame as reasonably possible. A request, whether oral or written and whether explicit or implicit, triggers the FLRA's time limits for processing and providing or denying an accommodation. Absent extenuating circumstances (see Section 103.10), the maximum time limits for processing

requests for accommodation are set out below. Notwithstanding these maximum time limits, some accommodations can be provided in less time.

A. For Applicant Requests.

1. Normally, no more than 30 days from the date of receiving the request for accommodation, if the request relates to an applicant's participation in the hiring process, whether or not medical information is required.

B. For Employee Requests.

1. Normally, no more than 30 days from the date of receiving the request for accommodation, when the request does not require medical documentation and does not involve extenuating circumstances.

2. Normally, no more than 35 days from the date of receiving the request for accommodation, when the request requires medical documentation.

3. Normally, no more than 45 days from the date of receiving a request for accommodation that requires considering reassignment as a possible accommodation (see Section 104.9).

C. Expedited Requests.

In certain circumstances, a request for reasonable accommodation requires expedited review and decision in a time frame that is shorter than the above time frames. This includes where a reasonable accommodation is needed to enable an applicant to be considered for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the decision-maker, the RAC, and the HR Director need to make a decision as quickly as possible and, if appropriate, provide a reasonable accommodation. Expedited processing would also be appropriate to enable an employee to attend a meeting scheduled to occur in the near future or when the employee is given short notice, such as an employee needing a sign language interpreter for a meeting scheduled to take place in 3 days. Other requests may also be appropriate for expedited processing.

103.10. Extenuating Circumstances.

Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. The following are examples of extenuating circumstances:

- There is an outstanding initial or follow-up request for medical information.
- The purchasing of equipment takes longer than desired.
- An accommodation involves the removal of architectural barriers.

When extenuating circumstances are present, the decision-maker must notify the individual of the reason for the delay and the approximate date on which a decision, or provision of the reasonable accommodation is expected. In some situations, the decision-maker may provide temporary accommodation measures during this extended period (see Section 103.12).

103.11. Determination on Requests for Reasonable Accommodation.

A. Approvals.

As soon as a decision to provide a reasonable accommodation is made, the decision-maker shall complete the appropriate part in the Reasonable Accommodation Request and Record form detailing the specific accommodation(s) and the time frame for effecting the accommodation(s). If the accommodation cannot be provided immediately, the decision-maker must inform the requestor of the projected timeframe for providing the accommodation. The original form shall be provided to the requestor and copies retained by the decision-maker and the RAC.

B. Denials.

As soon as a decision to deny a request for reasonable accommodation is made, the decision-maker shall complete the appropriate part in the Reasonable Accommodation Request and Record form detailing the specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship. When a specific requested accommodation was denied, but an offer of a different one in its place is provided, the decision-maker will explain both the reasons for the denial of the requested accommodation and the reasons why s/he believes that the offered accommodation will be effective. The Reasonable Accommodation Request and Record form will also contain information regarding the requestor's rights in connection with the denial, including the availability of the alternative dispute resolution

(ADR) and reconsideration processes within the FLRA, as well as the right to file an EEO complaint and the right to invoke other statutory processes, as appropriate. A request for ADR is not a request for reconsideration, and a request for reconsideration is not a request for ADR. But both processes may be requested simultaneously. And the use of the ADR and/or reconsideration process does not toll the time limit for filing an EEO complaint or invoking other statutory processes. The original form shall be provided to the requestor and copies retained by the decision-maker and the RAC.

1. ADR

A roster of ADR-trained specialists throughout the FLRA will be developed, to include employees in the Collaboration and Alternative Dispute Resolution Office, ADR specialists in the FLRA's Regional Offices, and appropriate employees in the Office of Administrative Law Judges and the Federal Service Impasses Panel. If the requestor wishes to participate in ADR, s/he must submit a written request to the decision-maker within 5 days of receipt of the denial notice. Within 5 days thereafter, a specialist (from outside the component in which the requestor works) will be requested to attempt resolution of the request for reasonable accommodation using ADR techniques. All reasonable efforts will be made to complete the ADR process within 30 days after the initial request for ADR.

2. Request for Reconsideration Within the FLRA.

If the requestor wishes reconsideration, s/he must submit a written request to the decision-maker within 5 days of receipt of the denial notice. The request may present additional information in support of her/his request. The decision-maker will issue her/his decision normally within 5 days on the Reasonable Accommodation Request and Record form.

If the decision-maker does not reverse the decision, the requestor may submit a written request for reconsideration to the Executive Director within 5 days of receipt of the decision-maker's denial of reconsideration. The Executive Director will issue her/his decision normally within 10 days on the Reasonable Accommodation Request and Record form. If the Executive Director acted as the decision-maker for the initial denial, then s/he will designate another senior-level official who is not under her/his authority to render the final agency decision on reconsideration.

3. EEO and other Statutory Claims.

The reconsideration process outlined above is in addition to statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Thus, employees may exercise any statutory rights to challenge the denial of a requested accommodation regardless of whether they have sought reconsideration. Employees may challenge the denial of a requested accommodation through the EEO-complaint process, which is described in FLRA Instruction 3700.1B. Denials of requested accommodations ***also*** are appealable to the Merit Systems Protection Board (MSPB), ***but*** only when they arise in connection with an action that is otherwise appealable to the MSPB.

The requirements governing the initiation of statutory claims, including time frames for filing such claims, remain unchanged.

- For an EEO complaint, the requestor must contact an EEO counselor within 45 calendar days from the date of receipt of the written notice of denial; and

- For an MSPB appeal, the requestor must file an appeal with the MSPB within 30 days of an appealable adverse action as detailed in 5 C.F.R. § 1201.3.

4. Re-evaluation of Existing Accommodation.

The re-evaluation process is intended to ensure that a previously granted accommodation is effective, remains appropriate, and is not causing an undue burden.

An employee previously granted a reasonable accommodation or a manager/supervisor within the employee's chain of command may request a re-evaluation of an existing accommodation at any time. The RAC may initiate a re-evaluation of an existing accommodation at any time and without the consent of the employee being accommodated.

The RAC is responsible for conducting re-evaluations of granted accommodations. Re-evaluations, whether initiated by the employee, the RAC, or another FLRA official, will follow the policies and procedures set forth within this Instruction for requesting reasonable accommodation. Before a re-evaluation is conducted, the employee will be notified, in writing, of the planned re-evaluation.

Re-evaluation of an existing accommodation will not be initiated as a form of disciplinary action, retaliation, or reprisal.

6. An employee or applicant may decline to accept an accommodation that is offered by the FLRA. If this occurs, then the manager, supervisor, or other FLRA official should document the declination and provide a copy to the RAC.

103.12. Temporary Accommodation Measures.

If there is a delay in providing an accommodation that has been approved, the decision-maker must investigate whether or not temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation on a temporary basis. For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

If a delay is attributable to the need to obtain or evaluate medical documentation, and the decision-maker has not yet determined that the individual is entitled to an accommodation, an accommodation may also be provided on a temporary basis. In such a case, the decision-maker will notify the individual on the Reasonable Accommodation Request and Record form that the accommodation is being provided on a temporary basis pending a decision on the accommodation request. Decision-makers who approve such temporary measures are responsible for ensuring that they do not take the place of a permanent accommodation, and that all necessary steps to secure the permanent accommodation are being taken.

0104. TYPES OF REASONABLE ACCOMMODATION.

As each accommodation is determined on a case-by-case basis, decision-makers must consult with the RAC and other appropriate staff to ensure that an effective accommodation is adopted. The types of accommodations detailed below are not exhaustive; instead, they illustrate the broad spectrum of appropriate accommodations that may be provided to an employee or applicant.

104.1. Modifications of Worksite.

Facilities should be made readily accessible. Modifications may include, but are not limited to, arranging files or shelves for accessibility; raising or lowering equipment and work surfaces to provide suitable working heights; installing special holding devices on seats, desks, or machines; and using Braille labels or other tactile cues for identification purposes.

104.2. Assistive Devices.

In determining whether the purchase of equipment and assistive devices should be authorized, consideration should be given to whether the device will enable the person with a disability to perform job-related tasks that s/he would otherwise be unable to carry out, and whether the major benefit would be an increase in the quantity, quality, or efficiency of the employee's work. Examples of assistive devices include a teletypewriter (TTY) or telephone amplifier to assist persons with hearing impairments and large-type computer terminals and Braille printers to assist persons with vision impairments. But the FLRA is not required to provide as reasonable accommodations personal-use items – such as prosthetic limbs, wheelchairs, eyeglasses, hearing aids, or similar devices – that are needed in accomplishing daily activities both on and off the job.

104.3. Readers, Interpreters, and Personal Assistants.

Under the provisions of 5 U.S.C. § 3102, the FLRA may employ, with or without pay, readers, interpreters, and personal assistants, or assign such assistance as may be necessary to enable the employee with a disability to perform her/his job, either at the regular duty station or while traveling on official business.

104.4. Flexible Leave Policies.

Decision-makers have authority to adopt flexible leave policies, subject to appropriate laws and regulations, that will accommodate employees with disabilities.

104.5. Modified or Part-Time Work Schedule.

Modified work schedules requiring change in arrival or departure times, periodic breaks, and part-time schedules are forms of accommodations. If a modified schedule is needed because of an employee's disability, and there is no other effective accommodation, a change in work schedule may be an effective accommodation unless it would impose an undue hardship.

104.6. Restructuring Jobs.

Job restructuring, involving assigning non-essential job functions that the employee cannot perform to other employees, or changing when or how a function, essential or non-essential, is performed, may be an appropriate accommodation if an employee is unable to perform job functions based on disability-related limitations.

104.7. Accommodations for Meetings, Conferences, Training, and Seminars.

The supervisor of an employee with a disability will arrange reasonable-accommodation needs for approved work-related events, whether held

at the FLRA or at other locations, including the arrangement of transportation to and from the event site.

104.8. Work at Home.

Employees may work at home to accommodate a disability, provided that the duties may be performed away from the principal office without creating an undue burden on the organization, and the employee has the necessary resources to accomplish the work.

104.9. Reassignment.

Reassignment to a vacant position is a form of reasonable accommodation that may be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation. Reassignment is a "last-resort" accommodation that must be considered if there is no other effective accommodation(s) that would enable the employee to perform the essential functions of the current job, or if all other possible accommodation(s) would impose an undue hardship on the organization. The following criteria apply to reassignments:

- The employee must be qualified - not necessarily the best qualified individual - for the vacant position. A position is considered vacant even if the FLRA has posted a notice or announcement seeking applicants for that position.

- If there is no vacancy at a comparable grade for which the employee is qualified, then the search should turn to lower-grade positions.

- Absent a position at the same grade or status, reassignment to the highest grade below the employee's current position is required. Further efforts to accommodate are not required if these efforts are unsuccessful.

0105. LIMITATIONS ON THE OBLIGATION TO ACCOMMODATE.

The obligation to accommodate employees or applicants has limits. The law does not require:

- Changes or modifications that would cause an undue hardship;

- Accommodations for persons who are not qualified for the position in question;

- Elimination of legitimate selection criteria or essential job functions;

- Lowering standards - whether qualitative or quantitative - that are applied uniformly to employees with and without disabilities. However, the FLRA acknowledges that one of the principle purposes of reasonable accommodation is to enable an employee with a disability to perform the functions of her/his job to include meeting the quantitative and qualitative performance standards;

- Creating a new position as an accommodation, although the FLRA must consider reassignment to a vacant position that the individual is qualified to perform;

- Excusing a violation of uniformly applied conduct rules; or

- Monitoring medication because it is not a reasonable accommodation. The FLRA has no obligation to monitor medication because doing so does not remove a workplace barrier. Similarly, the FLRA has no responsibility to monitor an employee's medical treatment or ensure that s/he is receiving appropriate treatment because such treatment does not involve modifying workplace barriers. However, accommodations such as flexible leave policies or modified work schedules that enable an employee to take medications or obtain medical treatment relating to a disability may be appropriate. Accommodations may also be appropriate to address side effects caused by medication that an employee must take because of a disability and symptoms or related medical conditions resulting from a disability.

- Providing an employee with a new supervisor. The law may, however, require that supervisory methods be altered as a form of reasonable accommodation.

0106. REASONABLE ACCOMMODATION FOR ALCHOLISM AND DRUG ABUSE.

Under a provision set forth in the ADA that also applies under the Rehabilitation Act, "a qualified individual with a disability" does not include an individual who is currently engaging in illegal use of drugs. Thus, such individuals are **not** entitled to reasonable accommodation. By contrast, individuals who are no longer using drugs illegally and who (1) are participating in a rehabilitation program or (2) have successfully completed a rehabilitation program are protected under the ADA and, by extension, the Rehabilitation Act. An example of reasonable accommodations that may be granted to individuals who have been rehabilitated or are undergoing rehabilitation would be measures that permit them to engage in self-help programs.

It is the policy of the FLRA that its workplace be free from the illegal use, possession, or distribution of controlled substances by its employees. See FLRA Instruction 3880.1A.

A person who is an alcoholic may be a "qualified individual with a disability" under the ADA and the Rehabilitation Act and may be entitled to reasonable accommodation.

Employees who are alcoholics or who have engaged in drug use are required to meet the same standards of performance and conduct as other employees.

0107. FEDERAL INFORMATION TECHNOLOGY ACCESSIBILITY INITIATIVE.

In 1998, Congress amended the Rehabilitation Act of 1973 and strengthened the provisions covering access to information in the federal sector for people with disabilities. As amended, Section 508 of the Rehabilitation Act requires that when federal agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. It also requires access for individuals with disabilities who are members of the public seeking information and services from a federal agency.

0108. RECORDS MANAGEMENT, RETENTION, AND DISPOSAL.

A. Records related to a particular individual.

Records related to a particular individual's accommodation request shall be kept until the employee separates from the FLRA. These records are confidential. They will be kept separate in a reasonable accommodation file and not in the employee's OPF.

B. Aggregate records.

The RAC will maintain the aggregate records of reasonable-accommodation activity described in Section 103.7, above, for 3 years.

0109. PROGRAM EVALUATION.

The RAC or HR Director will prepare an annual report in January for the Executive Director on reasonable-accommodation activity for the preceding year, using the aggregate records described in Section 103.7, above. The information contained in the report will be used solely for program review and evaluation purposes.

0110. EFFECTIVE DATE.

The policies addressed in this Instruction are effective immediately and replace any prior or conflicting FLRA policies addressing this topic.

Sarah Whittle Spooner
Executive Director

December 16, 2015
Date

APPENDIX A
Federal Labor Relations Authority
REASONABLE ACCOMMODATION REQUEST AND RECORD

PART I – GENERAL INFORMATION

Applicant/Employee Name (*Print*):	Position/Series/Grade:
Employee's Office:	Date of Request:
Name of Individual Initiating the Request if Other Than Applicant or Employee (*Print*):	Relationship of Individual Initiating the Request to the Applicant or Employee:

Type(s) of Accommodation Requested (*Be as specific as possible, e.g., adaptive equipment, reader, interpreter*):

Basis for Request (*When necessary, medical or other documentation in support of the accommodation may be submitted directly to the Reasonable Accommodation Coordinator. But, in accordance with the Genetic Information Nondiscrimination Act of 2008, do not provide "genetic information" as that term is defined in FLRA Instruction No. 3890.2– Reasonable Accommodation for Individuals with Disabilities.*).

If accommodation is time sensitive, please explain.

_____ _____
Signature of Applicant/Employee or Other Individual Completing Form Date of Submission

ACKNOWLEDGEMENT OF RECEIPT OF ORAL OR WRITTEN REQUEST:

_____
Name and Title of Decision-Maker (*Print*)

_____ _____
Signature of Decision-Maker Date of Receipt

PART II – DECISION-MAKER DETERMINATION (*Select one*)

[ ] Request for reasonable accommodation approved in full. Describe the specific type(s) of accommodation(s) approved, means by which the accommodation(s) will be implemented, and the timeframe for implementation.

[ ] Request for reasonable accommodation is approved in part. Describe the specific type(s) of accommodation(s) approved, means by which the accommodation(s) will be implemented, and the timeframe for implementation. Provide reason(s) why the other requested type(s) of accommodation(s) are not granted and identify alternative accommodations, if appropriate, and why they will be effective.

[ ] A decision on reasonable accommodation is delayed. Specify the reason for the delay. Provide estimated timeframe for decision. Specify any temporary accommodation measures taken while the request is pending.

[ ] Request for reasonable accommodation is denied. State the specific reason(s) why the requested accommodation(s) are ineffective or causes undue hardship.

Supporting Narrative (*Required*):

PART III – AVENUES OF REDRESS (*Information for applicant/employee whose request for reasonable accommodation has been denied*)

If you wish to request ADR of a denial, then you must submit a written request to the decision-maker within 5 days of receipt of the denial notice. Within 5 days, a specialist (from outside the component in which the requestor works) will be requested to attempt resolution of the request for reasonable accommodation using ADR techniques.

If you wish to request reconsideration of a denial (in part or in full) of your request for reasonable accommodation, then you may take the following steps:

1. Submit a written request to the decision-maker within 5 days of receipt of the denial notice. The request may present additional information in support of your request. The decision-maker will respond in writing to your request for reconsideration normally within 5 days.

2. If the decision-maker does not reverse her/his decision, then you may submit a written request for reconsideration to the Executive Director within 5 days of receipt of the decision-maker's denial of

reconsideration. The Executive Director will issue her/his decision in writing, normally within 10 days of receipt of the request. If the Executive Director acted as the decision-maker for the initial denial, then s/he will designate another senior level official who is not under her/his authority to render the final agency decision on reconsideration.

A request for ADR is not a request for reconsideration, and a request for reconsideration is not a request for ADR. But both processes may be requested simultaneously.

Reconsideration procedures do not affect the time limits for initiating the following statutory claims:

1. For an EEO complaint, contact an EEO counselor within 45 days from the date of denial of reasonable accommodation;

2. Where the denial of a request results in an adverse action, initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 C.F.R. § 1201.3.

PART IV – ACKNOWLEDGEMENTS

_____

Name and Title of Decision-Maker (*Print*)

_____ _____

Signature of Decision-Maker Date

_____ _____

Signature of Applicant/Employee Date

(*The applicant/employee's signature acknowledges only the receipt of the form and <u>does not</u> void one's reconsideration, statutory, or collective-bargaining appeal rights*).

PART V – RECONSIDERATION DETERMINATION
(*To be completed by the Decision-Maker and Executive Director or designee*)

Decision-Maker's Determination (*Specify reasons for sustaining the initial decision or changes to the initial decision and the basis for the decision*).

_____
Name and Title of Decision-Maker (*Print*)

_____ _____
Signature Date

Second-Level Determination (*Specify reasons for sustaining the Decision-Maker's determination or changes to the initial decision and the basis for the decision*).

_____
Name and Title of Official (*Print*)

_____ _____
Signature Date

_____ _____
Signature of Applicant/Employee Date

(*The signature of the applicant/employee acknowledges only the receipt of the form and does not void one's statutory or collective-bargaining-appeal rights*).

cc: Reasonable Accommodation Coordinator

FLRA INSTRUCTIONS SYSTEM

TABLE OF CONTENTS

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

INSTRUCTIONS

FLRA 1320.2

October 22, 1991

SUBJECT: FLRA INSTRUCTIONS SYSTEM

A. GENERAL PROVISIONS.

1. Purpose. The Federal Labor Relations Authority (FLRA) Instruction System establishes standard procedures for preparing FLRA Instructions for approval and issuance by the FLRA. The FLRA Instructions System will be used for issuing official communications, by means of instructions to offices within the FLRA. This FLRA Instruction replaces the system referred to as the Directives System.

2. Cancellation. This FLRA Instruction cancels FLRA Directives System, FLRA 1320.1, issued on January 2, 1981.

3. Delegation of Authority. The Executive Director is authorized to sign all FLRA Instructions. The following are authorized to sign FLRA Notices for their respective organizations: Executive Director for the Authority, the Deputy General Counsel for the Office of the General Counsel (OGC), or the Executive Director, Federal Service Impasses Panel (FSIP), for the FSIP.

4. Definitions.

a. "Instructions", as used herein, are those written issuances which:

(1) Establish or change policies, methods or procedures;

(2) Require action or impose workload; or,

DISTRIBUTION: C, OC, M1, M2, OM1, OM2, IG, CC, SOL, ALJ, OPI: OA/S
XD, IRRS, OA, OA/B, OA/P, OA/F, OA/S, GC,
DGC, AGC/LP, AGC/A, RD-1 to RD-7, FSIP

(3) Give information essential to the administration or operation of the FLRA. Written communications which are issued primarily to and for the public and addressed to individuals or groups on matters either personal or informational in nature (i.e., inter-office memoranda, letters and general informational documents), are excluded from the FLRA Instructions System.

b. "Notices", as used herein, are those written issuances by a component within the FLRA which:

(1) Establish operating procedures unique to that office, such as case handling procedures; or,

(2) Give information essential to the operation of the office issuing the FLRA Notice.

B. TYPES OF INTERNAL FLRA ISSUANCES.

1. FLRA Instructions - the issuance form used for either permanent or temporary FLRA Instructions. Temporary FLRA Instructions should have an expiration date shown in the upper right-hand corner, under the FLRA Number box. FLRA Instructions shall be printed on white paper.

2. Table of Changes on Instructions - transmittals used to issue: (1) individual revised pages to replace existing pages; (2) additional pages containing new related material; and (3) changes in supplemental material.

3. FLRA Notices - the issuance form used by components within FLRA for instructions on handling daily business unique to that particular office. The subject line should include the name of the component issuing the FLRA Notice. FLRA Notices shall be printed on blue paper.

C. FLRA INSTRUCTION PREPARATION. Detailed directions for preparation of FLRA Instructions are contained in Attachment 1.

D. COORDINATION.

1. Before a proposed FLRA Instruction is circulated to agency offices for coordination, it must be approved for circulation by the Executive Director. After Executive Director approval, advance copies of proposed instructions shall be sent by the originating office to the Chairman, Authority Members, the General Counsel, and the FSIP Chairman at least 2 days prior to circulating the draft instruction.

2. Each proposed FLRA instruction shall be fully coordinated with all agency offices of the FLRA (see Attachment 5 for a list of FLRA offices).

3. Any office receiving a proposed FLRA Instruction for coordination that does not have a substantive concern in the matter should strike out the word "concur," check the "no comment" block on FLRA Form 113 and return to the originator. Officials are asked to review proposed FLRA Instructions and provide a response within the requested deadline.

4. When a response has not been received or an extension has not been requested by the established deadline, the proposed FLRA Instruction will be processed with the assumption that there are no objections or comments.

5. FLRA Form 113 - Record of Coordination and Approval, shall be used for all FLRA Instruction clearances (see Attachment 6).

6. Proposed FLRA Instructions being circulated for clearance will be annotated to show that the document is a draft and the date the proposal was prepared, i.e., "DRAFT 5/15/90." Markings may be either stamped or typed and will be placed in a conspicuous position preferably at the top of the first page by the originating office. Attachment 3 contains more detailed instructions and procedures for coordination of proposed FLRA Instructions.

E. APPROVAL.

1. After a review of all responses has been completed and comments incorporated, as appropriate, FLRA Instructions will be signed by the Executive Director.

2. All FLRA Instructions must be processed through the FLRA Instructions Control Point (ICP) in the Office of Administration. The ICP will retain all coordination comments and the record of final approval as supporting documentation. Detailed coordination and approval procedures are contained in Attachment 3.

3. FLRA Notices may be approved by the head of the office issuing the FLRA Notice as indicated in paragraph A.3.

4. All FLRA Notices will be processed through the FLRA ICP for a number and date.

F. NUMBERING PROCEDURES. After approval and signature, each FLRA Instruction and FLRA Notice is to be forwarded to the ICP. Numbers are assigned by the ICP in accordance with instructions and procedures contained in Attachment 4. The ICP inserts the date and number on all FLRA Instructions and FLRA Notices.

G. DISTRIBUTION OF FLRA INSTRUCTIONS. The originating office will ensure that all offices receive a copy of the FLRA Instruction for dissemination among staff members. In order to ensure that all offices have a complete set of instructions, the ICP will issue a semiannual index of FLRA Instructions and FLRA Notices. The index will be prepared as of 1 January and 1 July of each calendar year and distributed to all agency offices.

H. CHANGING AND CANCELLING FLRA INSTRUCTIONS.

1. While other agency offices may recommend changes of FLRA Instructions, revisions can only be made by the originating office. FLRA Instructions can be altered by issuing selected revised pages as substitutes for existing pages. Any FLRA Instruction requiring extensive revision must be treated as a new issuance. The procedures for issuing changes are, with respect to coordination and approval, the same as for new Instructions. The format for issuing page changes is prescribed in Attachment 2.

2. FLRA Instructions are cancelled by the promulgation of a notification specifically identifying the FLRA Instruction to be cancelled by the originating office. Cancellation can occur either by a

replacement FLRA Instruction or by using the Record of Coordination and Approval, FLRA Form 113, informing all offices of the cancellation. FLRA Instructions may only be cancelled by the Executive Director.

3. Notices can only be altered by issuing a complete replacement by the originating office. Notices also cannot be used to replace an existing FLRA Instruction.

This instruction is effective on October 22, 1991 .

Solly Thomas
Solly Thomas
Executive Director

ATTACHMENT 1. FLRA INSTRUCTIONS FORMAT

A. PURPOSE. This attachment describes the procedures for preparing FLRA Instructions and FLRA Notices.

B. USE OF REQUIRED FORMS. FLRA Form Doc. 1087 - FLRA Instructions - will be used for the first page of each FLRA Instruction. FLRA Form Doc. 1086 - FLRA Notice - will be used for the first page of each FLRA Notice (see Attachment 7 and Attachment 8).

1. The box in the upper right-hand corner is reserved for the identification letters and numbers for the FLRA Instructions and FLRA Notices. The letters and numbers will be inserted by the FLRA Instructions Control Point (ICP).

2. The preparing office completes the "Subject" and "OPI" (Office of Primary Interest) portions. Following the word "Subject", insert a descriptive title for the FLRA Instruction in all capital letters. Normally, a title should be limited to one line. A longer title should be used only when essential for clarity. On the FLRA Notice, the subject line should also have the name of the component issuing the FLRA Notice. After the abbreviation "OPI," insert the organizational title or routing symbol for the offices which have primary functional interest in the substance of the document (see Attachment 5, page 8 for office symbols).

3. After final approval, the ICP completes the remainder of FLRA Docs. 1086 and 1087 by inserting the identification letter and number in the box and by inserting the date of approval on the line immediately below the box. The ICP also enters the expiration date of temporary FLRA Instructions and FLRA Notices. This date is selected in consultation with the OPI.

C. STANDARD PARAGRAPHS.

1. Purpose. Each FLRA Instruction and FLRA Notice should have a first paragraph entitled "PURPOSE" which describes the subject matter, and effect of the FLRA Instruction or FLRA Notice.

2. Cancellation. In this paragraph, identify by number, title and date all existing FLRA Instructions cancelled by the issuance of the Instruction. When used, this paragraph should always be the second paragraph.

3. Effective Date. Unless otherwise specified, FLRA Instructions are effective on the date signed by the Executive Director. When it is necessary to make provisions of an FLRA Instruction effective on a date other than the approval date, a special paragraph entitled "EFFECTIVE DATE" will be inserted.

4. Scope. A paragraph entitled "SCOPE" must be inserted to inform the reader of the applicability of the FLRA Instruction.

5. References. References should only be used to assist the reader in understanding the content of an FLRA Instruction. Cited references should be readily available to the reader.

6. Background. Where appropriate, a paragraph entitled "BACKGROUND" should be inserted to provide information essential to understanding the reason for issuance of the Instruction.

D. SUBDIVISIONS OF FLRA INSTRUCTIONS.

1. The basic unit of an FLRA Instruction is the paragraph. Each paragraph is a single block unit of text and may be subdivided into subparagraphs. Each subparagraph may be subdivided into further level subdivisions as illustrated below:

A. . . . . .
. . . . . .

1. . . . . .
. . . . . .

ATTACHMENT 1

1-3

a. . . . . .
. . . . . .

b. . . . . .
. . . . . .

(1) . . . . . .
. . . . . .

(2) . . . . . .
. . . . . .

2. . . . . .
. . . . . .

B. . . . . .
. . . . . .

Each paragraph or subparagraph should have at least two parts. If a unit of text (or heading) is marked "A," it should also have a paragraph (or heading) marked "B." If a subparagraph (or heading) is marked "1," it should also have a "2."

2. Normally, paragraphs and subdivisions of paragraphs are all that are needed in writing FLRA Instructions. However, if the document is lengthy, it may be necessary to group paragraphs into larger units. When this is necessary, use chapters, as illustrated below:

I. GENERAL PROVISIONS
II. CONTROL
III. OVERALL RESPONSIBILITIES
IV. PROCEDURES

Each outline should have at least two main headings, I and II. It is also permissible to subdivide chapters into sections or consolidate several chapters in parts in exceptional circumstances. For example, a comprehensive organizational manual could reflect broad policies and standards in Part I., and organizational components and suborganizational elements in Part II. devoted to each of the operating offices.

3. Tabular or other non-narrative information is identified as a figure if inserted in running text or as an attachment, if attached to the FLRA Instruction as a separate body of information. Attachments may also be used to separately treat detailed procedures, illustrate forms, reproduce excerpts from legislation, etc.

E. NUMBERING SUBDIVISIONS OF FLRA INSTRUCTIONS.

1. Parts - number in a straight Roman numeral sequence. Parts should only be used when writing a complex FLRA Instruction, such as a manual.

2. Chapters - number in straight Roman numeral sequence. Chapters should only be used when writing a lengthy FLRA instruction.

3. Paragraphs - begin with uppercase letters as shown in this attachment.

4. Subdivisions of paragraphs - alternate arabic numbering and lowercase letters at each level of suborganization as illustrated in paragraph D above.

5. Attachments and figures - number in a straight arabic numeral sequence.

6. Pages - number in straight arabic numeral sequence. Number the pages of each attachment in a separate arabic numeral sequence.

F. HEADINGS. All parts, chapters, paragraphs, and attachments must be given brief, descriptive headings and must be shown in all capital letters. Subdivisions of paragraphs should be given headings if reading and reference would be improved.

G. MARGINS AND INDENTATIONS. The basic format changes from odd to even pages only to the extent necessary for reference and binding purposes. Since odd pages and even pages are printed back to back, the margins should be adjusted for hole punching.

1. Margins. On the first page, line up left and right margins with the beginning and ending of the preprinted line just under the "Subject" line. Succeeding pages should be typed on plain bond paper. Text should be within established margins. The first page of an Instruction is typed on the appropriate FLRA form as outlined in paragraph B of this attachment. The first page of major segments (i.e., table of contents, attachments, etc.) should be typed on plain bond paper.

2. Indentations. Paragraph and subparagraph indentation and blocking should be followed as illustrated in this attachment. Begin typing the text on the second line below the preprinted line just under the "Subject" line on the first page; on succeeding pages, start text 1" from the top of the page. The right margin is 1" wide and the left margin is 3/4" wide. Page numbers should start approximately 1" from the top of a page. Leave at least 1" at the bottom of all pages and 2-1/2" at the bottom of the last page.

H. IDENTIFICATION, DATE AND PAGE NUMBERS. The ICP will enter the identification (alphabetical prefix and numbers) and date on all pages of FLRA Instructions and FLRA Notices. The page number is always shown in the center of the page.

I. SIGNATURE ELEMENTS. After approval by the Chairman, the FLRA Instructions will be signed by the Executive Director. FLRA Notices will be signed by the Executive Director for the Authority, the Deputy General Counsel for the OGC, or the Executive Director, FSIP, for the FSIP.

J. TABLE OF CONTENTS. A Table of Contents must accompany each FLRA Instruction and FLRA Notice.

ATTACHMENT 2. PAGE CHANGES

A. PURPOSE. This attachment gives the procedures and instructions for the use of page changes. Revisions to any FLRA Instruction can only be made by the originating office.

B. REQUIRED FORM. Use FLRA Form 112, Table of Changes, to transmit new or revised pages (see Attachment 9).

C. WHEN TO USE. Use revised pages to update an FLRA Instruction when this is the most economical way of updating. Generally, a complete revision (reprint and re-issue) is best when an FLRA Instruction is four pages or less in length. Individually changed pages issued as substitutes for existing pages are usually best on longer FLRA Instructions when less than half of the page must be updated. A Table of Changes is also used to transmit additional pages to existing FLRA Instructions.

D. PREPARATION OF NEW AND CHANGED PAGES.

1. Retype existing pages that need to be changed exactly as they were printed and distributed, except for the specific text that must be changed. On each revised page put the date of the revision in the upper right-hand corner.

2. When revised text adds to the total length of the FLRA Instruction it may be necessary to add additional pages. Number the additional page with "dash numbers," e.g., 4-1, 4-2, etc.

E. TABLE OF CHANGES-PREPARATION. Each Table of Changes carries the same subject as the basic FLRA Instruction. The Table of Changes forwards new or revised pages and has two standard sections (Filing Instructions and Explanation of Changes). The content of "Table of Changes" is explained below.

1. The boxes in the left-hand corner of the form are used to note changes or supplements in the FLRA Instruction.

2. The Effective Date is used to identify a specific date when the transmitted changes become effective.

3. The Filing Instructions section identifies each replaced page by number and date and instructs personnel to remove them and identifies by number and date the substitute and additional pages attached to the Table of Changes. (See sample below.)

FILING INSTRUCTIONS.

Remove Pages:	Dated	Insert Pages:	Dated
3 and 4	1/27/80	3 and 4	3/21/84
7 and 8	2/20/81	7 and 8	3/21/84
1 and 2 of Attachment 2	2/20/83	1 and 2 of Attachment 2	2/21/84

After filing the attached pages, filing instructions shall be retained at the beginning of the FLRA Instructions to ensure that the information contained in the FLRA Instruction is current.

4. The Explanation of Changes section is used to amplify the purpose paragraph by listing and explaining the specific policy and procedural changes contained in the page changes. Where possible, each item should be cross-referenced to the relevant paragraph of text.

ATTACHMENT 3. COORDINATION AND APPROVAL PROCEDURES

A. GENERAL.

1. Coordination. This process is used to complete staff work prior to final approval of an FLRA Instruction. Approval is the final step in the process of authorizing the issuance of an FLRA Instruction. Coordination should be obtained from all components.

2. Responsibilities. The initiating office should coordinate with each office, (see Attachment 5 for list of offices) all proposed FLRA Instructions, or revisions to existing FLRA Instructions, and secure appropriate coordination. Similarly, it is the responsibility of the initiating office to attempt to resolve significant issues raised by coordinating organizational components. When responsible efforts to resolve disputed issues are not successful, the initiator will submit the proposal with a concise but clearly explained summarization of the pros and cons for final decision by the Chairman.

B. LEVELS OF CLEARANCE FOR INSTRUCTION.

1. Prior to submitting to the Executive Director for approval of coordination, all FLRA Instructions must be reviewed by the ICP.

2. Initiating offices must review comments received and attempt to resolve issues raised. Any issues that cannot be resolved must be referred by the originating office to the Chairman for resolution.

3. After completion of the coordination process, FLRA Instructions must be forwarded by the originating office to the Chairman for final approval.

4. After final approval, the FLRA Instruction will be forwarded to the Executive Director for signature.

5. After signature by the Executive Director, the FLRA Instruction will be forwarded to the ICP to insert a number and date.

6. After signature and assignment of number and date, the initiating office will distribute the FLRA Instruction and ensure that the ICP receives the original and five copies along with all comments from the coordinating organizational components.

ATTACHMENT 4. FLRA INSTRUCTIONS NUMBERING SYSTEM

A. GENERAL DESCRIPTION OF NUMBERING SYSTEM. Each FLRA Instruction and FLRA Notice identification number is comprised of the following components (see paragraph B for examples):

1. The abbreviation "FLRA" indicating that it is a Federal Labor Relations Authority Instruction.

2. A four digit subject designator, e.g., 1100, 3400, 6400, etc., which identifies the subject area in which the FLRA Instruction falls. The approved subjects and their codes are shown in Attachment 5. In the case of FLRA Notices, the subject number is prefixed by an N.

3. A sequential number to distinguish FLRA Instructions, FLRA Notices, and page changes from each other within each subject and Instruction series. Within each series, FLRA Instructions are numbered in straight arabic numeral sequence. Page changes are numbered in the same way as the pages of the document being revised.

4. In addition, an FLRA Instruction which is completely revised (a complete replacement for an existing one) retains its original number suffixed with a capital letter "A," "B," etc., to distinguish it from previous versions. For example, the first complete revision to FLRA Instruction 1000.1 is designated FLRA 1000.1A, the second complete revision is designated FLRA 1000.1B, etc.

B. EXAMPLES OF FLRA INSTRUCTIONS NUMBERS.

1. FLRA Instructions.

FLRA 1320.1	- The first FLRA Instruction in the subject area of paperwork management.
FLRA 1320.1A	- The first revision to the first FLRA Instruction developed in a subject area.
FLRA 1320.2	- The second FLRA Instruction on the same subject.

2. FLRA Notices.

FLRA N 1320.1	-	First FLRA Notice on case handling procedures.
FLRA N 1320.2	-	Second such FLRA Notice on the same subject.

3. Page Changes.

FLRA Chg 1	-	First page change issued to FLRA 1320.1.
FLRA Chg 2	-	Second page change issued to FLRA 1320.1.
FLRA Chg 3	-	Third page change issued to FLRA 1320.1.

ATTACHMENT 5. SUMMARY OF CLASSIFICATION CODES

0000	Classification Codes, Checklists, and Indices
1000	General Management and Administration
1100	Organization, Authorities, Functions, and Internal Relationships
1200	Public Relations
1300	Management Systems and Standards
1500	Travel and Transportation (Persons and Personal Effects)
1600	Investigations and Security Programs
1700	Administrative Support
1900	Emergency Preparedness
2000	Legal
2100	Rules, Regulations and Orders
2200	Congressional Relations
2300	General Financial Management
2500	Budget
2700	Accounting
2900	Auditing
3000	Personnel Management
3200	General Personnel Provisions
3300	Employment
3400	Employee Performance and Utilization
3500	Position Classification, Pay, and Allowances
3600	Attendance and Leave
3700	Affirmative Action
3800	Employee Relations and Related Functions
3900	Special Personnel Programs and Activities
4000	Logistics Management - General
4100	Retirement and Insurance
4200	Personal Property Management
4400	Procurement
4800	Inspections
6100	Internal Investigations
6200	Investigation, Public Hearings and Reports
6400	Unassigned
7000	Unassigned

ATTACHMENT 5

5-2

SUBJECT CLASSIFICATION SYSTEM

SERIES NUMBER	GENERAL SUBJECT COVERAGE
0000	CLASSIFICATION CODES, CHECKLISTS, AND INDEXES
	0000 - Instructions Checklist
1000	GENERAL MANAGEMENT AND ADMINISTRATION
1100	ORGANIZATION, AUTHORITIES, FUNCTIONS, AND INTERNAL RELATIONSHIPS
	1101 - Legislative Planning
	1102 - Congressional Hearings
	1104 - Legislative History
	1106 - Statutes and Amendments
	1108 - Legal Interpretations
	1110 - Proposed Legislation
	1120 - Task Forces or Working Groups
	1121 - Establishment of Groups
	1122 - Working Group Proceedings
	1124 - Report of Working Groups
	1126 - Implementation Activities
	1128 - Working Group Correspondence
	1129 - Committees and Conferences
	1160 - FLRA Organization
	1170 - Support Functions
	1180 - Briefings and Presentations
	1190 - Related Laws, Rules, and Regulations

SERIES NUMBER	GENERAL SUBJECT COVERAGE
1200	PUBLIC RELATIONS
	1210 - News Media
	1220 - Speeches and Presentations
	1225 - Films and Publications
	1230 - Government Relations
	1240 - International Activities
	1280 - Agreements With Other Agencies
1300	MANAGEMENT SYSTEMS AND STANDARDS
	1301 - General Planning Factors and Guidance
	1306 - Annual Program Objectives
	1308 - Workload and Production
	1309 - Program Reviews
	1310 - Management Analysis and Surveys
	1311 - Management Surveys and Studies
	1320 - Paperwork Management
	1322 - Correspondence Management
	1323 - Records Management
	1324 - Forms Management
	1325 - Publications Management
	1326 - Regulations Management
	1327 - Mail Management
	1330 - Publishing and Audio-Visual Management
	1331 - Printing Services
	1333 - Photographic Services
	1340 - Management Information Systems
	1350 - Manpower Management
	1360 - Facilities Management
	1380 - Improvement

SERIES NUMBER	GENERAL SUBJECT COVERAGE
1500	TRAVEL AND TRANSPORTATION (Persons and Personal Effects)
	1510 - Annual Travel Orders
	1520 - Access to Aircraft
	1530 - Individual Encumbrances
	1540 - Movement of Household Goods
	1550 - Annual and Quarterly Cost Estimates and Expenses
	1560 - International Travel
1600	INVESTIGATIONS AND SECURITY PROGRAMS
	1620 - General Investigations
	1630 - Personnel Security
	1640 - Information Security
	1650 - Property Protection
	1660 - Identification Media
1700	ADMINISTRATIVE SUPPORT
	1710 - Office Space
	1720 - Property Acquisition
	1740 - Telephone and Teletype Service
	1755 - Mail Control and Distribution
	1760 - Printing and Reproduction
	1765 - Publications Distribution
	1780 - Library Services
1900	EMERGENCY PREPAREDNESS
	1910 - Operational Plans
	1940 - Emergency Resources Management
	1950 - Reports, Tests, and Exercises

ATTACHMENT 5

SERIES NUMBER	GENERAL SUBJECT COVERAGE
2000	LEGAL
2100	RULES, REGULATIONS AND ORDERS
	2110 - Rules
	2120 - Regulations
	2130 - Orders
	2150 - Claims and Litigation
2200	CONGRESSIONAL RELATIONS
	2210 - Correspondence with Members of Congress
	2230 - Appropriations - Senate
	2240 - Appropriations - House
	2250 - Presentations and Briefings (Other than Appropriations)
	2260 - Annual Reports to Congress
2300	GENERAL FINANCIAL MANAGEMENT
	2310 - Program and Financial Plan
	2350 - Scheduled Annual Salary
	2360 - Overtime
	2370 - Hazard Pay
2500	BUDGET
	2520 - Administrative Control of Funds
	2530 - Budget Submissions - OMB Review
	2540 - Budget Submissions - Congressional Review
	2550 - Budget Execution
	2560 - Budget Reports

SERIES NUMBER	GENERAL SUBJECT COVERAGE
2700	ACCOUNTING
	2710 - Appropriation Symbol and Accounting Codes
	2720 - Interdepartmental Transfers
	2730 - Payroll, Leave and Allowances
	2740 - General Financial Reports
	2750 - Voucher Examination and Certification
	2770 - Official Representation and Reception Expenses
	2780 - Collection, Safekeeping, Deposits, and Disbursement of Funds
	2790 - Debt Collection Procedures For Salary Offset Pursuant to 5 USC Section 5514
2900	AUDITING
	2910 - Audit Reporting
	2950 - General Accounting Office Audits
3000	PERSONNEL MANAGEMENT
3200	GENERAL PERSONNEL PROVISIONS
	3210 - Personnel Concepts and Definitions
	3220 - Personnel Assignments
	3240 - Personnel Program Inspections, Surveys and Audits
	3250 - Personnel Records and Document Processing

SERIES NUMBER	GENERAL SUBJECT COVERAGE
3300	EMPLOYMENT
	3310 - Recruitment, Selection, and Placement
	3311 - Cooperative Education Program
	3320 - Job Retention
	3322 - Reemployment Rights
	3323 - Restoration After Military Duty
	3330 - Experts and Consultants
	3340 - Qualification Standards
	3341 - Upward Mobility
	3350 - Reduction-in-Force
	3360 - Retirement and Insurance
3400	EMPLOYEE PERFORMANCE AND UTILIZATION
	3410 - Employee Training and Development
	3430 - Performance Evaluation
	3450 - Incentive Awards and Employee Recognition
	3470 - Probationary Periods
3500	POSITION CLASSIFICATION, PAY, AND ALLOWANCES
	3510 - Job Classification and Job Evaluation
	3512 - Position Descriptions
	3514 - Appeals on Classification
	3520 - Pay Rates and Systems
	3530 - Pay Administration
	3540 - Allowances and Differentials
	3550 - Performance Management and Recognition

SERIES NUMBER	GENERAL SUBJECT COVERAGE
3600	ATTENDANCE AND LEAVE
	3630 - Leave Administration
3700	AFFIRMATIVE ACTION
	3705 - Affirmative Action for Disabled Veterans 3710 - Affirmative Action for Hiring, Placement and Advancement of Handicapped Individuals 3720 - Equal Employment Opportunity 3730 - Employee Responsibilities and Conduct 3733 - Political Activity 3770 - Labor/Management Relations
3800	EMPLOYEE RELATIONS AND RELATED FUNCTIONS
	3810 - Employee Discipline 3820 - Administrative Grievance System 3830 - Adverse Actions and Performance Based Actions 3840 - Outside Employment 3850 - Employee Separation Procedures 3860 - Services to Employees 3861 - Injury Compensation 3870 - Standards of Conduct, Ethics, and Post-Employment Conflict of Interest
3900	SPECIAL PERSONNEL PROGRAMS AND ACTIVITIES
	3901 - Health Service Program 3902 - Safety Program 3960 - Employee Recreation and Welfare Activities 3961 - Employee Club 3962 - Credit Union 3970 - Fund Raising Campaigns

SERIES NUMBER	GENERAL SUBJECT COVERAGE
4000	LOGISTICS MANAGEMENT - GENERAL
4100	UNASSIGNED
4200	PERSONAL PROPERTY MANAGEMENT 4210 - Authorities and Responsibilities 4220 - Supply/Inventory Management 4230 - Personal Property Management 4240 - Vehicle Management
4400	PROCUREMENT 4410 - Procurement Policy and Procedures
4800	INSPECTIONS
6100	INTERNAL INVESTIGATIONS
6200	INVESTIGATION, PUBLIC HEARINGS AND REPORTS
6400	UNASSIGNED
7000	UNASSIGNED

ATTACHMENT 5

5-10

OFFICE SYMBOLS

CHAIRMAN	C
CHIEF COUNSEL TO THE CHAIRMAN	OC
MEMBERS	M1 - M2
CHIEF COUNSELS TO THE MEMBERS	OM1 - OM2
OFFICE OF THE INSPECTOR GENERAL	IG
OFFICE OF CASE CONTROL	CC
OFFICE OF THE SOLICITOR	SOL
OFFICE OF ADMINISTRATIVE LAW JUDGES	ALJ
OFFICE OF THE EXECUTIVE DIRECTOR	XD
OFFICE OF INFORMATION RESOURCES AND RESEARCH SERVICES	IRRS
OFFICE OF ADMINISTRATION	OA
BUDGET DIVISION	OA/B
PERSONNEL AND EEO DIVISION	OA/P
FINANCIAL MANAGEMENT DIVISION	OA/F
ADMINISTRATIVE SERVICES DIVISION	OA/S
GENERAL COUNSEL	GC
DEPUTY GENERAL COUNSEL	DGC
ASSISTANT GC LEGAL POLICY	AGC/LP
ASSISTANT GC APPEALS	AGC/A
REGIONAL DIRECTORS	RD-1 to RD-7
FEDERAL SERVICE IMPASSES PANEL	FSIP

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SUBJECT	PERSON TO CONTACT ON ATTACHED	
	NAME / OFFICE / PHONE	
EXPLANATION		

ORIGINATING OFFICE CLEARANCE

TITLE	SIGNATURE	DATE	DEADLINE DATE FOR COORDINATION

COORDINATION ROUTING

OFFICE/OFFICIAL	SIGNATURE	DATE	CONCUR		NON-CONCUR	COMMENT ADOPTED
			NO COMMENT	COMMENT		
Issuance Control Point Clearance						
APPROVED (TITLE)						

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FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
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FLRA 1320.2

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FLRA Form 112 (1/81)

FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, DC

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION

Date: June 29, 2009

MANAGEMENT CONTROL SYSTEMS	**Instruction**
	FLRA 1311.2

Contents

I. PURPOSE.

This instruction outlines responsibilities for complying with the Federal Labor Relations Authority (FLRA) Management Control Program, the Federal Managers' Financial Integrity Act (FMFIA) of 1982, Office of Management and Budget (OMB) Circular A-123 (revised), and OMB Circular A-127, Financial Management Systems. It also outlines FLRA policy and describes responsibilities of FLRA personnel for implementing FMFIA.

FLRA's Management Control Program establishes the framework by which managers and supervisors design and implement strategies for improving programs and operations within agency components. Management staff at all levels should design management structures that ensure accountability for results and include appropriate cost-effective and reasonable controls for ensuring an effective and efficient use of resources.

FLRA promotes good management by emphasizing through its Management Control Program that managers/supervisors use their judgment to decide on the best tools to identify and to correct management control weaknesses. Management accountability requires programs to be managed with integrity and in compliance with applicable laws. Managers are responsible for improving programs and customer service through ongoing monitoring of performance measures, effective cost control, and continuously improving quality and timeliness.

II. SCOPE.

The provisions of this instruction apply to all FLRA components, financial and programmatic: the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel (FSIP).

III. AUTHORITIES AND REFERENCES.

A. 31 U.S.C. § 3512(b) and (c), the Federal Managers' Financial Integrity Act of 1982 (FMFIA);

B. OMB Circular A-123, "Management Accountability and Control";

C. Government Performance and Results Act (GPRA) of 1993;

D. Chief Financial Officers Act (CFO Act) of 1990, as amended by the Accountability of Tax Dollars Act of 2002;

E. Government Accountability Office (GAO) Standards for Internal Control in the Federal Government, dated 1999; and

F. OMB Circular A-127, Financial Systems, dated October 2009.

G. Financial Management Improvement Act, dated 1996

H. OMB Circular A-136, Financial Reporting Requirements, dated June 6, 2008.

IV. OBJECTIVES.

The objectives of management control are to provide management with reasonable, but not absolute, assurance that (1) programs achieve intended results; (2) resources are used consistent with agency mission; (3) financial and other resources are safeguarded from unauthorized use or disposition; (4) transactions are executed in accordance with authorization; (5) financial and statistical reports are reliable; (6) applicable laws, regulations, and policies are adhered to; and (7) resources are efficiently and effectively managed. These objectives cover all FLRA program and administrative activities.

V. POLICY.

All FLRA organizational units will establish and maintain effective systems of program, accounting, and administrative controls for stewardship of Government resources. All levels of management within the Authority are responsible for determining that adequate controls are in place to safeguard resources, promote efficient and effective management, and protect the health and safety of employees. FLRA managers must take systematic and proactive measures to:

A. Develop and implement appropriate, cost-effective management controls for results-oriented management;

B. Assess the adequacy of management controls in programs and operations;

C. Identify needed improvements, including integrating management controls into automated systems;

D. Take corresponding corrective action; and

E. Report annually to the Chairman on the results of management control efforts. Other required agency reports (e.g., Performance Accountability Reports (PAR) and CFO Act) pertaining to management accountability and performance goals will be coordinated at the Office of the Executive Director level to minimize duplicate reporting requirements.

FLRA encourages all managers to achieve good management control by emphasizing a self-assessment model that encourages line managers to strive for continuous improvement within their organizations. Continuous assessment using management information systems that focus on results-oriented data will enable FLRA managers to identify weaknesses in management controls and take early action to correct or prevent problems by incorporating "best practices" solutions; by improving quality, timeliness, and customer satisfaction; and by ensuring cost-effective use of resources.

A. Managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs, mitigating adverse aspects of FLRA operations, and assuring that programs are managed with integrity and in compliance with applicable law.

B. Management control is an integral, ongoing part of the management activity. The FLRA will establish and maintain appropriate management controls within each component, program, function, suborganization, system, or activity established by management to direct and guide its operations. Integration of these controls into the agency's budget process, operational management, and accountability reporting also furthers the intent and requirements of the Government Performance and Results Act of 1993.

C. The primary method of evaluation in the FLRA is self-evaluation. All levels of management will be involved in ensuring the adequacy of management control systems by developing, designing, installing, maintaining, reviewing, monitoring, enforcing, and reporting on management controls.

D. Evaluations, such as those done by the Office of Inspector General or by the GAO, serve as additional means of assessing management controls.

E. The cost of management control systems should not exceed the anticipated benefits, tangible or intangible. To this end, this instruction does not provide a basis for establishing separate audit, analysis, or review staffs in support of management control activities.

F. The FLRA will establish and maintain a cost-effective system of management controls to provide reasonable assurance that programs and activities are effectively and efficiently managed and to protect against fraud, waste, abuse, and mismanagement.

VI. DEFINITIONS.

A. Assessable unit. Any organizational, functional, programmatic subdivision of an FLRA organization that requires management control responsibilities. This generally equates to organizational/operational, components/offices.

B. Management accountability. This is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs, mitigating adverse impacts of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

C. Management controls. The plan of organization, methods, policies, and procedures adopted by FLRA management to provide reasonable assurance that:

1. Agency programs and functions are achieving their intended goals or objectives;

2. Resources are used consistent with agency mission;

3. Programs and resources are protected from waste, fraud, and mismanagement;

4. Programs are operating in accordance with applicable laws and regulations; and

5. Reliable and timely information is obtained, maintained, reported, and used for decision making.

Among other things, these methods and procedures provide reasonable assurance that obligations and costs are in compliance with applicable law; funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the asserts.

D. Management control documentation. This comprises the following:

1. **System documentation** includes written policies, instructions, organization charts, procedural write-ups, manuals, memoranda, flow charts, software, and related materials used to describe organizational structure, operating procedures, and administrative practices to communicate responsibilities and authorities for accomplishing programs and activities; and

2. **Review documentation** shows the type and scope of the review, the responsible official, the pertinent dates and facts, the key findings, and any recommended corrective actions.

E. **Management control review.** A detailed examination of the management environment, the work performed by a component/program/function and the management system to ensure that resources will be protected and that desired results or mission can be achieved. Management control reviews may be performed when reasonable assurance of effectiveness of management controls cannot be achieved through other means. The management control review process consists of:

1. Establishing and updating the management control review priorities each fiscal year;

2. Providing training to conduct management control reviews, as needed;

3. Assessing the adequacy of management controls by continuous monitoring and periodic evaluations/reviews;

4. Reporting the status of management control reviews and control weakness correction, and reporting results in review reports and assurance statements, in accordance with Departmental guidelines; and

5. Monitoring corrective actions until they are completed.

F. **Management control system.** The totality of the methods and measures used by the FLRA for management control. If written documentation of methods and procedures established as a normal means of doing business already exists and can be used to provide the required reasonable assurance, it is not necessary to establish additional procedures solely for the purpose of meeting this requirement.

G. **Reasonable assurance.** The confidence that a manager has in the adequacy and effectiveness of management controls, after having weighed the risks against the safeguards (a GAO standard). This standard recognizes that the cost of management controls should not exceed the benefits derived therefrom, and that the benefits consist of reductions in the risks of failing to achieve the desired objectives.

H. **Vulnerability assessment.** A process used to determine the likelihood or potential for loss within a program from fraud, waste, abuse, or mismanagement. The process requires analyses of the general control environment and inherent risk, and a preliminary evaluation of safeguards.

I. **Internal control deficiency.** Exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.

J. **Reportable condition.** An internal control deficiency, or combination of internal control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report external financial data reliably, in accordance with generally accepted accounting principles, such that there is more than a remote likelihood that a misstatement in the entity's financial statement, or other significant financial reports, that is more than inconsequential will not be prevented or detected. The term "remote" is defined in Statement of Federal Financial Accounting Standard (SFFAS) No. 5, Accounting for Liabilities of the Federal Government, as the chance of the future event, or events, occurring being slight.

K. **Material weakness.** A reportable condition, or combination of reportable conditions, that results in more than a remote likelihood that a material misstatement in the financial statements, or other significant financial reports, will not be prevented or detected. Material weaknesses represent specific instances of a failure in a system of control important enough to be reported to the President and the Congress. A weakness of this type would (1) significantly impair the fulfillment of FLRA's mission; (2) deprive the public of needed services; (3) violate statutory or regulatory requirements; (4) significantly weaken safeguards against waste, loss, unauthorized use, or misappropriation of assets; (5) merit the attention of the Executive Office of the President, or the relevant congressional oversight committees; (6) present an appearance problem, or reflect adversely on the integrity of the agency; and/or (7) result in a conflict of interest.

The definitions of control deficiency and definitions of reportable condition and material weakness relative to financial reporting are based upon the definitions provided in Auditing Standard No. 2, An Audit of Internal Control over Financial Reporting Performed in Conjunction with An Audit of Financial Statements, issued by the Public Company Accounting Oversight Board (PCAOB).

VII. MANAGEMENT CONTROL STANDARDS.

A. General management control standards.

1. **Compliance with law.** All program operations, obligations, and costs must comply with applicable laws and regulations. Resources should be efficiently and effectively allocated for duly authorized purposes.

2. **Reasonable assurance and safeguards.** Management controls must provide reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. Management controls developed for agency programs should be logical, applicable, reasonably complete, and effective and efficient in accomplishing management objectives.

3. **Integrity, competence, and attitude.** Managers and employees must have personal integrity and are obligated to support the ethics programs in the FLRA. The spirit of the Standards of Ethical Conduct requires that they develop and implement effective management controls and maintain a level of competence that allows them to accomplish their assigned duties. Effective communication within and between offices is encouraged.

B. **Specific management control standards.**

4. **Delegation of authority and organization.** Managers will ensure that appropriate authority, responsibility, and accountability are defined and delegated in writing to accomplish the mission of the organization, and that an appropriate organizational structure is established to effectively carry out program responsibilities. To the extent possible, controls and related decision-making authority will be in the hands of managers and staff.

5. **Separation of duties and supervision.** Key duties and responsibilities in authorizing, processing, recording, and reviewing official agency transactions will be separated among individuals to the maximum extent possible. Managers will exercise appropriate oversight to ensure that individuals do not exceed or abuse their assigned authorities.

6. **Access to, and accountability for, resources.** Access to resources and records should be limited to authorized individuals, and accountability for the custody and use of resources will be assigned and maintained.

7. **Recording and documentation.** Transactions will be promptly recorded and properly classified and accounted for to prepare timely accounts and reliable financial and other reports. The documentation for transactions, management controls, and other significant events must be clear and readily available for examination.

8. **Resolution of audit findings and other deficiencies.** Managers will promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other management control review findings, and related recommendations. Managers will complete,

within established time frames, all actions that correct or otherwise resolve the appropriate matters brought to management's attention.

VIII. RESPONSIBILITIES.

A. FLRA positions specifically determined to have management control responsibilities include:

Authority

1. Chairman
2. Member 2
3. Member 3
4. Director of Policy and Performance Management
5. Executive Director
6. Chief Administrative Law Judge
7. Solicitor
8. Director, Administrative Services Division
9. Director, Budget & Finance Division
10. Director, Information Resources Management Division
11. Director, Equal Employment Opportunity
12. Inspector General

Office of the General Counsel

1. General Counsel
2. Deputy General Counsel
3. Regional Director, Atlanta Regional Office
4. Regional Director, Boston Regional Office
5. Regional Director, Chicago Regional Office
6. Regional Director, Dallas Regional Office
7. Regional Director, Denver Regional Office
8. Regional Director, San Francisco Regional Office
9. Regional Director, Washington Regional Office

Federal Service Impasses Panel

1. Chairman
2. Executive Director

As applicable, position descriptions and performance standards for the above-identified positions are to include duties and performance requirements related to the responsibilities identified in section B below.

B. Management control responsibilities applicable to each of the above-identified positions include:

1. Ensuring that management control standards are incorporated into all activities;

2. Integrating performance goals and objectives into performance plans at all appropriate levels and communicating them to appropriate staff;

3. Continuously monitoring and improving the effectiveness of management controls;

4. Taking corrective actions as necessary to correct identified deficiencies in management controls;

5. Reporting identified significant weaknesses to the Executive Director; and

6. Submitting each year, by the date requested, the annual certification that management controls within their assigned area are effective (required by the Federal Managers' Financial Integrity Act of 1982 [Public Law 97-225] and OMB Circular A-123 (Revised)).

   Certifications are to take the form of a statement of assurance as to the adequacy and effectiveness of management controls within their assigned area. Specifically, the statement of assurance is to take one of the following forms: (1) statement of assurance; (2) qualified statement of no assurance, considering the exceptions explicitly noted; and (3) statement of no assurance. The certification statement must describe the analytical basis for the type of assurance being provided and the extent to which activities were assessed.

C. Additional, specific management control responsibilities are applicable to the following positions:

1. **Executive Director and the Director for Policy and Performance Management.** The Executive Director and the Director of Policy and Performance Management are responsible for the overall design, implementation, coordination, approval, and reporting of the management control process within the FLRA. This includes responsibility for maintaining agency-wide management control documentation, and responsibility for assisting all persons with management control responsibilities in carrying out those responsibilities. This responsibility requires obtaining annual certification from each of the other appropriate FLRA managers that they are compliant with management controls that are in place.

2. **Director, Budget & Finance Division.** The Director, Budget & Finance Division (BFD), is responsible for assisting the Executive Director, FLRA, in carrying out management control responsibilities over financial operations within the FLRA. The Director, BFD, is responsible for preparation of the financial and related input for the FLRA's annual Federal Managers' Financial Integrity Act report, which contains a statement of assurance and a report on material weaknesses, if any. In addition, the Director, BFD, will coordinate the follow-up on the implementation of actions to correct previously identified material weaknesses within BFD's purview.

3. **Director, Administrative Services Division**. The Director, Administrative Services Division (ASD) is responsible for assisting the Executive Director, FLRA in carrying out management control responsibilities over administrative operations within the FLRA. The Director ASD is responsible for providing input supporting agency financial statements, Performance Accountability Reporting, and OMB Circular A-123 compliance for the following operational areas; Purchase Card Program, Contracting, Physical Security, Inventory, Leasing and Continuous Operations (COOP).

4. **Chief Information Officer**. The Chief Information Officer (CIO) is responsible for assisting the Executive Director, FLRA in carrying out management control responsibilities over information technology operations within the FLRA. The CIO is responsible for OMB Circular A-123 compliance, Disaster Recovery Planning, and Federal Information Security Management Act (FISMA) reporting.

IX. MANAGEMENT CONTROL PROGRAM PROCESS AND DOCUMENTATION.

A. The management evaluation process.

This is the continuous evaluation by managers of management control or financial management systems. Sources of information for evaluating management controls include, but are not limited to, knowledge gained from daily operations of programs and systems; program evaluations; IG and GAO reports; management reviews; audits; annual performance plans and reports; and other reports or reviews. The process includes the identification and disclosure of weaknesses, and the taking of any necessary corrective actions.

B. Risk assessments.

Risk assessments are to be conducted by teams composed of members with

a high level of technical and/or management expertise. A risk assessment will generally be performed when a major program /organizational change occurs (e.g., conversion from manual to automated system, or restructuring the delegations of authority), a major problem is discovered, or the Executive Director requests that a new risk assessment be performed.

C. Management control evaluation documentation.

1. **Agency management control documentation.** The FLRA management control documentation will be coordinated and maintained by the Executive Director. This documentation is used to assist in monitoring and reporting on the management control activities of the agency.

2. **Assessable unit management control documentation.** The manager having responsibility for an assessable unit is responsible for maintaining any documentation that supports the annual certification statement attesting to the adequacy of the management controls in that unit.

D. Weaknesses and corrective actions.

Identified material and significant weaknesses will be linked to appropriate goal(s) and objective(s) in work and/or performance plans. All weaknesses, identified by audits, reviews, or day-to-day program management, and regardless of significance, shall be documented and corrected by the responsible office. All identified material weaknesses will be included in the FLRA Integrity Act statement.

Supervisors should consider the following questions in determining whether to report the deficiency to the next management level:

1. Could this problem lead to a serious injury or loss of life?

2. If the problem exists in my part of the organization, is there a good possibility that the same problem may exist in other parts of the organization (office, area, Region, bureau, Department)?

3. Is there likelihood that higher levels of management may get questions from Congress or the media about the problem?

4. Is it going to take more than three months to correct the deficiency (deficiencies that take longer to correct should be reported to the next management level)?

5. Was there a significant loss of Government resources? Is there a potential for significant resource loss?

6. Was there a significant financial loss through either misuse of appropriated funds or under collection of revenues? Is there a potential for a significant financial loss?

7. Were laws broken or regulations ignored?

8. Could the FLRA have any potential liability to employees or to third parties as a result of the deficiency?

9. Were there ethical violations by organizational personnel?

10. Was inaccurate information reported, upon which management or third parties based decisions?

11. Could this problem lead to an audit qualification on a financial statement?

12. When a supervisor is in doubt about the need to report the deficiency to the next management level, the supervisor should err on the side of reporting the deficiency.

E. Corrective action plan.

Responsible managers will develop and implement a corrective action plan for all identified weaknesses. The plan will include a statement of each weakness, milestones, estimated interim and final completion dates, and specific office responsibilities.

F. Verification review.

A verification review will be conducted, at the direction of the Executive Director, for all material weaknesses. The review will substantiate that the corrective actions of record have been completed and that those actions have corrected the identified weaknesses.

G. FLRA Integrity Act statement.

This statement of assurance is submitted annually by the Chairman to the Congress, with copies to the President, the Director of OMB, and the Comptroller General of the United States. As noted in OMB Circular A-123 (Revised), the statement must take one of the following forms: (1) statement of assurance; (2) qualified statement of assurance, considering the exceptions explicitly noted; or (3) statement of no assurance. The statement must include a description of the analytical basis for the type of assurance being provided, and the extent to which agency activities were assessed.

X. RELATIONSHIP TO PERFORMANCE MANAGEMENT PROGRAM.

Duties and responsibilities related to any aspect of management controls should be documented as part of the individual performance plan.

XI. RECORDS MANAGEMENT.

Documentation shall be retained by the responsible office in accordance with applicable records management retention schedules.

Sonna Stampone 6·29·09
Sonna Stampone
Acting Executive Director

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 4200.1A

06/30/88

SUBJECT: FLRA NONEXPENDABLE PERSONAL PROPERTY MANAGEMENT PROGRAM

1. PURPOSE. This regulation establishes the FLRA nonexpendable Personal Property Management Program; prescribes the policies and procedures for the management, accountability, utilization, and disposal of FLRA nonexpendable personal property; and assigns responsibilities.

2. SCOPE. This regulation applies to all organizational activities of FLRA (Headquarters and Regions).

3. Cancellation. This regulation cancels FLRA Regulation 4200, FLRA Procurement Regulations.

4. REFERENCES.

   a. The Federal Property and Administrative Services Act of 1949. Requires each executive agency to maintain adequate inventory controls and accountability systems for the property under its control. (Title 40, United States Codes, Section 483.)

   b. The Federal Property Management Regulations (FPMR). Includes the policies and guidelines relating to property management, utilization, and disposal which are mandatory in all executive agencies. (Title 41, Code of Federal Regulations, Chapter 101, Subchapters E and H.)

   c. Title 31, United States Code (U.S.C.), section 3512. Requires that each executive agency will establish and maintain systems of accounting and internal control designed to provide effective control over, and accountability for, all property for which it is responsible.

5. STATEMENT OF POLICY.

   a. All Federal Labor Relations Authority employees are responsible for proper use, care and protection of Government-owned personal property which is provided for their use in performance of their duties. Government property is intended for official use only.

DISTRIBUTION: OC,OM, OMM, OE, FSIP, OGC, XD, OCC, SOL, OPI: OA
ALJ, OA, OA/B, OA/F, OA/P, IRRS

b. All FLRA property must be accounted for whether acquired by purchase, transfer, excess acquisition, or by any other means and whether acquired at a cost or at no charge. Accounting for the property is accomplished in accordance with the procedures prescribed in this Regulation.

c. Excess personal property from the Personal Property Center (PPC) or other Federal agencies will be utilized in lieu of new procurement whenever economically practicable.

d. Excess property no longer required within FLRA will be transferred to the GSA Personal Property Center (PPC) or to other Federal agencies of the Government for possible further utilization. To the maximum extent feasible, GSA prescribed utilization, screening and disposal functions will be accomplished by the transfer of FLRA excess property to other Federal agencies.

6. DEFINITIONS. Terms which are integral to the understanding and use of this regulation appear in Appendix A. Property codes for individual items are contained in Appendix B.

7. RESPONSIBILITIES OF PROPERTY OFFICERS.

a. Chief, Budget and Administrative Services Division under the guidance of the Director of Administration will administer the agency-wide Personal Property Management Program. In this capacity the Chief, Budget and Administrative Services Division will:

(1) Administer a Personal Property Management Program within the agency;

(2) Provide all FLRA activities, headquarters and field, with technical advice and guidance;

(3) Evaluate the effectiveness of the Personal Property Management Program and its implementation;

(4) Establish control and recordkeeping procedures;

(5) Designate the FLRA Property Management Officer; and

(6) Ensure that each office designates property custodians.

b. Property Management Officer. It will be the responsibility of the Property Management Officer to:

(1) Develop and recommend, for approval by the Chief, Budget and Administrative Services Division, any changes required in the procedures established by this Program to improve the control, management and utilization of property;

(2) Coordinate the training and maintenance of a property custodian network with FLRA Offices;

(3) Provide for adequate maintenance of all property records and furnish all Property Custodians with periodic or special reports on the status of the nonexpendable personal property within the Agency;

(4) Coordinate with FLRA offices the conducting of periodic inspections of the records and property held by the Property Custodians to minimize the possibility of the loss, damage or destruction of the property;

(5) Maintain written records of qualified Property Custodians within the agency and provide means for the transfer of custodian accountability and responsibility when appropriate;

(6) Review all requisitions which involve the proposed purchase of property (furniture, typewriters, calculators, etc.) in accordance with this Regulation;

(7) Recommend whether property should be excessed; and

(8) Prepare necessary documentation including year end reports.

c. Property Custodians. It will be the responsibility of each Property Custodian to:

(1) Transfer all items to stock that are not needed or are not likely to be needed in the near future;

(2) Obtain the repair of items not in proper working condition when it is cost effective to do so;

(3) Assign property whenever appropriate to individual employee(s), who will be responsible for such property until released by the proper authority;

(4) Execute the policies and procedures for property management as established in regulations and instructions; and

(5) Conduct a complete and accurate physical inventory of property within his/her jurisdiction annually, and at other times as required, (see Section 13).

d. Board of Survey. The Chairman, or by delegation the Executive Director, will appoint a Board consisting of three representatives. If the case involves the Office of the General Counsel one member of the Board will be from that office. It will be the responsibility of the appointed Board of Survey to:

(1) Review referred cases involving lost, stolen or property damaged to determine if employee negligence was involved;

(2) Make specific recommendations to the Chairman through the Executive Director and the Director of Administration with regard to:

(a) Relieving (or not relieving) an employee of accountability for property reported lost, stolen, destroyed or damaged;

(b) Determining financial liability for the replacement or repair of property reported lost, stolen, destroyed or damaged, where such loss to the United States occurred through negligence, (see Section 15).

(3) Record in writing a summary of its meetings to include any findings, recommendations or actions taken.

e. All Employees of the Agency. It will be the responsibility of all employees in the Agency to:

(1) Properly use and protect any Agency property that may come into their custody or control. An employee may be held financially liable for violation of this responsibility that results in the loss of or damage to government property.

(2) Use Agency property for no other purpose than in the performance of their regular Agency duties.

8. REPLACEMENT CRITERIA. This chapter prescribes the standards for the replacement of office machines and furniture. In accordance with GSA FPMR Subchapter E, parts 101-25.403 and 101-25.404, the following replacement standards apply:

a. Office Machine Replacements. Replacement of office machines will be in accordance with the standards prescribed in subparagraphs (1) and (2) below. The acquisition cost of comparable machines

may be obtained from the applicable Federal Supply Schedules. Estimated repair or overhaul costs including the costs of transportation may be obtained from the contractors providing service under GSA term contracts, where provided, or at the lowest rate available from other sources.

(1) Electrically operated machines (e.g., typewriters) under 12 years of age or manually operated machines under 15 years of age will not be replaced unless the estimated one-time repair or overhaul cost of a machine exceeds 50 percent of the replacement cost for a comparable new model, without regard to the trade-in or sale value.

(2) Electronic office machines (e.g., calculators, accounting machines) will be replaced if the repair costs exceed 80 percent of the replacement cost of a comparable new model. Notwithstanding the limitations prescribed above, office machines may be replaced under the following conditions provided a written justification supporting such replacement is approved by the Budget and Administrative Services Division:

(a) When there is a continuing history of breakdowns with corresponding loss of productivity through downtime. Judgements in these cases should be based on the personal knowledge of the machine operator or the supervisor and by the repair records;

(b) When office machines lack the essential features such as those required in the performance of a particular task which is continuing in nature and other suitable office machines are not available;

(c) When the repair parts are not readily available causing a machine to be out of service for an excessive amount of time; or

(d) When the cumulative repair costs on a machine appear to be excessive based upon the personal knowledge of the machine operator or the supervisor and as indicated by the repair records. Although a machine accrues repair costs equal to the original acquisition cost, it is not necessarily indicative of the current condition of a machine. For example, a substantial repair expenditure included in the cumulative cost may actually have resulted in restoring the machine to as good as new condition. While the cumulative repair costs suggest

an area for investigation, they should not be used as the only factor in the repair or replacement decisionmaking process.

b. Furniture Replacement Standards. Furniture (e.g. office, household, quarters, and institutional) will not be replaced unless the estimated cost of the repair or rehabilitation (based on GSA term contractors) including any transportation expenses exceeds 75 percent of the cost of a new item of the same type and class (based on the prices shown in the current edition of the GSA Stock Catalog, applicable Federal Supply Schedules, or the lowest available market price.) An exception may be authorized by the Chief, Budget and Administrative Services Division in those situations where the rehabilitation of the furniture at 75 percent of the cost of a new item would not extend its useful life for a period compatible with the cost of rehabilitation.

9. CLASSIFICATION OF PROPERTY FOR FINANCIAL ACCOUNTING PURPOSES. This section provides guidance in determining which items of nonexpendable personal property used by FLRA in its internal operations are capitalized and which items are treated as expensed when acquired.

a. Application of Classification Guide. The classification guide for expensed and capitalized items is for use by the Accounting Officer and Property Management Officer to ensure that:

(1) Capitalized items are properly identified on the control records of the Property Custodians and identified in the automated property records; and

(2) The Financial Management and the Budget and Administrative Services Divisions are in agreement about what should be classified as assets of the Agency.

b. Classification Criteria. In determining the property classification of the various items of nonexpendable property, consideration will be given to such factors as acquisition costs, expected useful service life, susceptibility to personal uses, nature of use, cost of maintaining accountability and any other factors which may have a bearing on the classification. It will be necessary to use good judgement in applying these factors to individual items since the classification placed on an item will dictate the type of inventory control and accounting records required to be maintained.

(1) Capitalization. All items of equipment or leasehold improvements with a useful service life of more than one year, acquired at a cost of $300.00 or more will be

capitalized. In addition, there are property items, with a unit cost of less than $300.00 which are capitalized by reason of their sensitivity. Those items of equipment under $300.00 which are not capitalized but are, in a given period, purchased in large quantities, are recorded in a separate asset account and amortized over a reasonable period of time so that operating costs for the period of the acquisitions are not distorted. Equipment items in this category need not be supported by individual property records.

(a) All nonexpendable personal property acquired by FLRA is capitalized at actual cost, i.e., gross amount of vendor's invoice, plus transportation and installation charges, less any trade, commercial or volume discounts.

(b) Property acquired with a trade-in is capitalized at what the purchase price would have been had there been no trade-in, i.e., the cost paid or payable, plus the amount allowed by the seller on the traded-in property, unless the total is greater than what it would have been without a trade-in.

(c) Nonexpendable property acquired from excess or from other Government agencies and for which rehabilitation costs are not incurred, is capitalized at original cost or appraised original value, if the cost is not known, with a simultaneous entry for depreciation to establish the book value. Transportation cost from point of origin to point of first use is also capitalized.

(d) The cost of repairing or rehabilitating equipment acquired from excess, plus transportation from point of origin to point of first use, is capitalized provided the total cost does not exceed the current replacement value. In the event that the total cost exceeds the current replacement value, the excess cost is expensed, and is a direct charge to the requisitioning organization. Rehabilitation costs for property on hand are capitalized but limited to the amount which, when added to the net book value, is equal to the current replacement value. Any excess costs are a direct charge to the requisitioning organization. Cost incurred in making additions, alterations, rehabilitations, or replacements will be capitalized where such changes prolong the useful life of the property or its capacity to render service. The value of any property superseded or destroyed through such changes will be removed from the property accounts.

Expenditures for normal maintenance and repairs will be treated as current operating expenses when such expenditures do not specifically extend the useful life of the property or add materially to its value.

(e) Property acquired on a reimbursable basis from another Government agency will be recorded at the transfer price as determined by agreement or application of appropriate statutory requirements of FLRA regulations, but not less than its estimated useful value. Transportation, installation, or related costs will be included except when recording is based on estimated useful value.

(f) Property acquired from other than Federal agencies will be recorded in the accounts at an estimated amount representing what the FLRA would have been willing to pay for it, giving due consideration to usefulness to the FLRA, condition, and estimated market value.

(g) Property acquired under lease/purchase contracts, which in substance represents installment purchasing, will include the purchase price under the contract and related costs incurred by the Government. The total cost shall be capitalized upon acceptance of the property from the contractor, or when the option to purchase is exercised, with simultaneous entry for depreciation to establish the book value.

(2) Depreciation. It is the primary responsibility of the PMO to determine the useful life and estimated salvage value under criteria and standards established by the Office of Administration.

(a) The personal property of FLRA in use or on loan at the beginning of a fiscal year, is charged a full year's depreciation. No depreciation is charged in the year of acquisition. This computation and posting of depreciation charges is performed annually by the inventory system. An item of property is depreciated on a straight-line basis until it reaches a book value of one dollar, or some other established salvage value.

(b) Straight-line rates of depreciation are based upon the useful life of the asset. Similar property is grouped into classes based on the intended use and its estimated useful life. The annual depreciation rates for the classes of capital property are as follows:

CATEGORY	USEFUL LIFE	ANNUAL DEPRECIATION
Office Furniture	15 years	6.7%
Filing Equipment	15 years	6.7%
Office Machines	10 years	10.0%
Special Purpose Equipment	10 years	10.0%
Special Category	1 year	100.0%

(c) The useful life period assigned to a class of property is its estimated useful life to the FLRA. This is intended to produce a reasonable cost of depreciation and serve as a management guide in determining amounts of capitalized property to be replaced in future periods. The useful life assigned to a class of property may not be less than those contained in schedules of composite service lives issued by the Internal Revenue Service.

(d) Special Category property is that property costing more than $300.00, but having a useful life of less than one year. This property is not entered into the Property Management System records.

10. PERSONAL CHARGE AND RESPONSIBILITY.

a. Property Custodians will require employees to sign FLRA Form 171, "Receipt for Property", for Government property loaned to them for the conduct of official business at points other than official posts of duty and for all items which are assigned to them for personal care.

b. The signing of FLRA Form 171 verifies that the individual accepts personal responsibility for the items issued, for appropriate care and use of the property and for return to the issuing office, or for properly accounting for the property if lost or damaged.

c. FLRA Form 171 is prepared and signed in duplicate. The original is retained by the issuing office and the copy is given to the individual who signed for the property. Upon return of the property, or satisfactorily accounting for it if lost or destroyed, the original of the receipt is returned to the person who signed it. The appropriate Property Custodian is responsible for maintaining the accountability records for personal charge items.

d. The Optional Form 7, "Property Pass," will be issued only for the removal of all FLRA and personally owned property from Government premises. It will be noted on the Optional Form 7 that the property is FLRA-owned or personally-owned. The form will contain the employee's name, phone number, division, and an accurate description of property. A list of authorized personnel with their signatures will be kept by the building security personnel. The property pass will be prepared in duplicate. The original copy will be kept by the employee to show to the building security personnel upon removal of the property. The duplicate copy will be kept in an active file by the PMO. Upon the return of the property, the original will be marked "cancelled."

e. When an official or employee is separating from FLRA or moving between Headquarters and a Regional Office or between Regional Offices, the FLRA Exit Clearance statement will be notated that the property was returned. This clearance must be accomplished before the final payment of salary when the employee is separating from the Agency.

11. TRANSFER OF ACCOUNTABILITY. When a Property Custodian is to be relieved of accountability for the property in his/her area, a transfer of accountability to a new Property Custodian will be accomplished with the assistance of the Property Management Officer. The incoming custodian will be required to formally accept full accountability and responsibility for all Government-owned property involved in the transfer of accountability. FLRA Form 172, "Transfer of Accountability" will be used for this purpose. Ideally, a joint inventory of the property account by the new and departing Property Custodian will be conducted. When circumstances prohibit the taking of a complete physical inventory, the new custodian, as a minimum, is to take a physical inventory of a sufficient number of items to determine the accuracy of the records prior to assuming responsibility for the account. The Property Management Officer is responsible for supervising the transfer of property accountability between individuals and to ensure that the best interests of the Government are served prior to relieving the departing custodian of responsibility for the property involved. If no new custodian is assigned prior to the departure of the previous custodian, the official assigned to be acting during the interim will be the Property Custodian, and accountability must be transferred to that individual. If the area of accountability is abolished, split in parts, merged with another area of accountability, etc., all parties involved must be satisfied that accountability has been properly transferred before the previous Property Custodian is relieved of responsibility.

12. IDENTIFICATION OF PERSONAL PROPERTY. All Government property defined as nonexpendable will be permanently marked to identify it as Government-owned. The marking of property will be performed so that it facilitates the identification and control of the item as well as the taking of physical inventories. In this regard the Procurement Office will provide copies of all equipment/furniture purchase orders to the PMO.

    a. Identification Markings. Serially numbered labels for this purpose will be supplied by the Office of Administration. Any marking used beside an FLRA property label must be approved in advance by the PMO. Precautions will be taken to mark designated items as they are received and, in addition, to re-label designed items which have lost their identification markings for one reason or another.

    Markings designating FLRA ownership will be removed when transferring the items to another agency, but not before the actual transfer takes place. Similarly, upon transfer of items to FLRA, other marks showing ownership by previous owners should be removed.

13. TRANSFER OF PROPERTY. When property is transferred within FLRA, the Property Custodian transferring the property will forward a completed SF 122 to the PMO so that the property system can be updated and accountability can be transferred.

14. UTILIZATION AND DISPOSAL OF EXCESS PERSONAL PROPERTY.

    a. Property excess to the needs of FLRA will be called to the attention of the Property Custodian so that the custodian can determine if the property can be transferred to any other location under his/her jurisdiction which has a need for the property. In such an instance, the cost of transportation will be considered in any transfer.

    b. If the Property Custodian finds that no one in his/her accountable area can use the property, the custodian will notify the Property Management Officer, whose responsibility is to see if the property can be used elsewhere in the Agency. If it can, the Property Custodian of the organization to whom the property is excess is notified so that he/she can prepare a Transfer Action, Standard Form 122, (Attachment 4) to transfer the property to the organization that has a need for it.

    c. If the Property Management Officer determines that the property is excess to the Agency's needs, action will be initiated to transfer the property out of the Agency. In all instances,

Federal Property Management Regulations shall be adhered to. Reports to GSA of any excess personal property will be made on Standard Form 120, "Report of Excess Personal Property", (Attachment 5) which will be approved by the Chief, Budget and Administrative Services Division prior to submission to GSA.

d. As part of the property disposal procedures for the Budget and Administration Services Division, the individual who authorizes the disposal of property (approves SF 120) cannot arrange for the physical disposal of the property.

e. Acquisition of Excess vs. New Procurement. All FLRA activities will give appropriate consideration to the acquisition of excess personal property in lieu of new procurement to satisfy needs. In determining whether to request or reject offered excess personal property, consideration will be given to its remaining utility, the costs of acquiring it which will include packing, handling and transportation, and the cost of any necessary repairs to make the property serviceable.

15. ANNUAL RECONCILIATION - PHYSICAL INVENTORY.

a. Inventory Required. Annually, and at such other times as required, a physical inventory of all nonexpendable personal property will be conducted. Each Property Custodian will be responsible for the conduct of a complete and accurate physical inventory of all accountable property charged to the Property Custodian. Personnel responsible for conducting the inventories shall be given instructions and training by the PMO.

b. Inventory Procedure. On or about June 1 each year an inventory will be taken of all accountable nonexpendable property. The results will be forwarded to the PMO within 30 days.

The PMO shall furnish each Property Custodian with a tabulated listing of all accountable property for which the custodian is charged. Each listing will include a description and the property control serial number, in serial number sequence, of all property for which the Custodian is accountable. This listing will constitute the basis for conducting the inventory. Each Property Custodian will check the prepared listing against a physical inspection of all property held in the Custodian's custody, noting and reporting any shortages, overages or other discrepancies. All notations will be made on the provided list and returned to the PMO.

c. Certification of Inventory. Upon completion of each inventory the Property Custodian will return one copy of the listing to the PMO, with the following certification over his/her signature:

> "I certify that this inventory is complete, and correct that all discrepancies are noted."

d. Report of Results of Annual Inventory. Within 30 days of the completion of the inventory the PMO will report the results of the annual inventory including any lost items to the Chief, Budget and Administrative Services Division.

16. LOST OR DAMAGED GOVERNMENT PROPERTY.

a. When property is lost, damaged, stolen or destroyed by causes other than normal wear and tear the employee will report the incident to the Property Custodian who in turn will notify the PMO. The PMO will initiate FLRA Form 173, "Government Property Lost or Damaged." If research shows possible negligence, misconduct, or deliberate unauthorized use, the Form 173 will reflect this and the Chief, Budget and Administrative Services Division will prepare FLRA Form 174, "Report of Survey," and recommend to the Chairman (or designee) that a Board of Survey be instituted. (See Section 6d.)

b. The Survey Board will conduct an investigation and record their findings and recommendations on FLRA Form 174. The recommendations will constitute the Survey Board's evaluation of the facts and circumstances. The Survey Board members will address:

(1) Financial liability;

(2) The matter of relief from the accountability and/or the responsibility of individuals involved; and

(3) Such other recommendations as the Survey Board may consider appropriate.

c. The Board of Survey Report will be forwarded to the Chairman (or designee) for final action. If the findings are approved, all copies will be forwarded to the Office of Administration for completion and Financial Management Division's certification. The Office of Administration will retain one copy and return the original to the Chief, Budget and Administrative Services Division. If the Board of Survey Report is disapproved, all copies of the Report will be returned to the PMO for necessary corrections, additions, or other actions.

d. The Board of Survey's findings may be subject to outside review. If an employee is determined by the Board of Survey to be financially liable for the lost, damaged, stolen or destroyed property, the employee is entitled to notice, opportunity to inspect and copy records, and a hearing before a non-FLRA hearing officer under section 11.45 of the Debt Collection Act of 1982 (Public Law 97-365).

e. Financial Liability Procedures. In any case where the Survey Board finds that financial liability exists and the Chairman (or designee) adopts the Board of Survey's findings, the following actions will be taken:

(1) A reasonable assessment of the loss, damage, or destruction will be made. An explanation of the amount and data to support the assessment will be appended to FLRA Form 174. Where the damage to the property is repairable, the costs of such repairs may be used. Pecuniary liability may not exceed the fair market value of the property which is determined by qualified technical personnel.

(2) The individual charged with the financial liability will be shown the FLRA Form 174 and all supporting documentation. If the employee wishes to make a statement, it will be attached to the Board of Survey Report. The individual charged will be informed that under Agency collection procedures further action may be taken by the Office of Administration to make collection.

f. When the property is still available, as in the case of damage, at the time that the Board of Survey Report is initiated, the disposition will only be made after the review and approval of the Report. Disposition will be made as recommended on the approved Report of Survey. When the property is transferred to a sales center or Property Disposal Officer at GSA, a reference will be made on the Report as to the document which effected the transfer of the property.

17. REPORTS TO GSA. The following reports will be prepared by the Property Management Officer approved, by the Chief, Budget and Administrative Services Division and submitted to GSA following the close of the fiscal year.

a. An annual report of the utilization of domestic excess personal property will be submitted in duplicate to GSA within 60 days after the close of each fiscal year using the SF-121, "Annual

Report for Utilization and Disposal of Excess Surplus Personal Property." Interagency Report Control Number 0015-GSA-AN has been assigned to this report.

b. An annual report in letter form of personal property obtained as excess or as property not excess to the owning agency but determined to be no longer required for the purpose of the appropriation from which it was purchased will be submitted to GSA within 90 days after the close of each fiscal year. Interagency Report Control Number 0154-GSA-AN has been assigned to this report. Negative reports are required.

c. An annual report in letter form for the Exchange and Sale of Personal Property for Replacement Purposes has been assigned Interagency Report Control Number 1528-GSA-AN. It is due 90 days after the close of each fiscal year.

d. The Annual Report of Personal Property Furnished to Non-Federal Recipients is a report in letter form. It has been assigned Interagency Report Control Number 0154-GSA-AN and it is due to GSA 90 days after the close of each fiscal year.

This regulation is effective June 30, 1988.

Jacqueline R. Bradley
Executive Director

APPENDIX A

DEFINITIONS

1. Personal Property is divided into two categories: supplies (expendable) and equipment (nonexpendable).

   a. Supplies. All commodities are:

      (1) Consumed or expended within 1 year after being put into use;

      (2) Converted in the process of construction or manufacture;

      (3) Use to form a major part of an equipment item or fixed or property or;

      (4) Of limited value (e.g., desk trays, pen sets, ash trays, calendar standards, telephone list finders, waste receptacles, etc.).

   b. Equipment. Personal property of a more or less durable nature (excluding those in the supply category) which may be expected to have a period of service of a year or more after being placed in use without material impairment of its physical condition. This excludes minor parts used on equipment (i.e., accessories valued at less than $100). For the purposes of this regulation, equipment is further divided into capitalized and noncapitalized equipment.

      (1) Capitalized Equipment is office furniture (e.g., desks and cabinets) or items similar thereto and office equipment (e.g., typewriters and calculators) having a value of $300 or more per item.

      (2) Noncapitalized Equipment is other property which does not meet the definition of capitalized equipment but cannot be classified as expendable property, supplies, or equipment.

2. Property Custodian is a person designated in writing by the Property Management Officer (PMO) to maintain the accountability for FIRA property in accordance with a prescribed system.

3. Property Management Officer (PMO) is an individual who is designated by the Chief, Budget and Administrative Services Division to manage the Personal Property Accountability System.

4. Personally Charged Property is property that is assigned to an FLRA employee for their personal use by an approved FLRA 171.

5. Non-Government Property is property that is leased, rented, vendor-owned, or personally owned property of FLRA employees.

6. Pecuniary Liability is the responsibility of an individual for reimbursement of the monetary value of damaged, lost, or destroyed Government property.

7. Responsibility is the obligation of a person for the proper custody, care, and safekeeping of Government property in his or her possession or under his or her supervision.

8. Depreciation. Depreciation is the amortization of the acquisition cost of an item of capital property over its estimated useful life to the activities benefiting from its use.

9. Acquisition Cost. Acquisition cost means the total cost of intergrating an item of capital property into FLRA. This includes the cost of the property transportation changes, installation fees, and any other miscellaneous charges incurred in the preparation of the property before it can be placed into service.

10. Excess Personal Property. Excess personal property is property which after thorough screening has been determined to be excess to FLRA's needs. Such property is listed in formal reports of excess to the General Services Administration for use elsewhere in the Government or for disposal.

11. Surplus Personal Property. Surplus personal property are items of personal property which the General Services Administration (GSA) determines to be surplus to the needs of the Government.

12. Unusable Personal Property.

    a. Salvage. Salvage is personal property which has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use as a unit is clearly impractable.

b. Scrap. Scrap is personal property which has no value except for its basic material content.

13. Repair. Repair means servicing an item of personal property to return it to a like-new or usable condition.

14. Rehabilitation. Rehabilitation means the repair and refinishing of an item or personal property to return it to a like-new condition so that its value is significantly increased and its useful life is extended.

15. Property Accountability. Property accountability means the obligations of the official designated as Property Management Officer to establish and maintain adequate property accounting records and safeguards to insure effective control over the FLRA property. These obligations may not be delegated to other officers or employees, although care and safekeeping of property may be assigned to others, including a designated Custodial Officer.

16. Loss. The terms "loss" and "property loss" are used frequently to indicate the loss of, damage to, or destruction of property of the United States and other property under the control of the FLRA. They are used as comprehensive terms to avoid repetition of the longer expression.

APPENDIX B

PROPERTY CODES

01ATX	Ash tray stand
01BB1	Ballot box
01CM1	Bookcase, other than sectional, contemporary
01GM1	Bookcase, sectional, glass sliding doors, general metal
01GM2	Base, bookcase, general metal
01GM3	Top, bookcase, general metal
01GM4	Bookcase, 2 shelves, 1 adjustable, W22" X D018", General
01GW1	Bookcase, sectional, with glass sliding doors, general wood
01GW2	Base, bookcase, general wood
01GW3	Top bookcase, general wood
01GW4	Bookcase, other than sectional, general wood
01GW5	Bookcase/rack, display 2-through, general wood
01GZ1	Bookcase, shelving, open face, wood/metal
01MW1	Bookcase, double doors, wood modern
01TW1	Bookcase, double door, executive, traditional, wood
01UW1	Bookcase, double glass doors, wood, unitized
01UW2	Bookcase, storage wood unitized
02CM1	Cabinet, storage with adjustable shelves, contemporary
02CM2	Cabinet, storage/wardrobe combination, metal, contemporary
02GM1	Cabinet, storage, general metal
02GM2	Cabinet, storage with wardrobe combination, general metal
02MW1	Cabinet. storage/file, wood, modern
02UW1	Cabinet, storage, wood, unitized
03MW1	Cabinet, telephone, wood, modern
03TW1	Cabinet, telephone, executive, wood, traditional
05CM1	Chair, rotary, metal, contemporary
05CM2	Chair, side, metal, contemporary
05CM3	Chair, typist, metal, contemporary
05GM1	Chair, rotary, general metal
05GM2	Chair, side, general metal
05GM3	Chair, typist, general metal
05GM5	Chair, folding, general metal
05GM7	Chair, drafting, general metal
05GM8	Chair, stacking, metal
05GW1	Chair, rotary, general wood
05GW2	Chair, side, general wood
05GW3	Chair, typist, general wood
05MM1	Chair, rotary, metal, modern
05MM2	Chair, side, metal, modern
05MM3	Chair, typist, metal, modern
05MM6	Chair, easy (lounge), metal, modern
05MW2	Chair, side, wood, modern
05MW3	Chair, typist, wood, modern
05MW6	Chair, easy or overstuffed, cloth, modern, wood
05TW1	Chair, rotary, executive, traditional, wood
05TW2	Chair, executive, traditional, wood (Judges)
05TW3	Chair, typist, executive, traditional, wood

05TW4	Chair, wing, executive, traditional, wood
05TW5	Chair, barrel, executive, traditional, wood
05TW6	Chair, easy (lounge), executive, traditional wood
05UW1	Chair, rotary, wood, unitized
05UW2	Chair, side, wood, unitized
05UW3	Chair, typist, wood, unitized
06CM1	Costumer, wearing apparel, 4 hooks, metal contemporary
06GM1	Costumer, wearing apparel, 4 hooks, general metal
06GM2	Rack, wearing apparel, 6-12 hats, general metal
06GW1	Costumer, wearing apparel, 4 hooks, general wood
06TW1	Costumer, wearing apparel, 4 hooks, exec., trad-wood
07CM1	Credenza, metal, contemporary
07GM1	Credenza, general metal
07MW1	Credenza, wood, modern
07TW1	Credenza, executive, traditional, wood
07UW1	Credenza, wood, unitized
08GW1	Sofa, general wood
08MM1	Sofa, metal modern
08MW1	Sofa, upholstered, wood, modern
08TW1	Sofa, executive, traditional, wood
09CM1	Desk, double pedestal, metal, contemporary
09CM2	Desk, typist, single pedestal, metal, contemporary
09CM3	Desk, single ped, 45 x 30, metal contemporary
09CM6	Attachment, desk, clerical/typist contemporary metal
09GM1	Desk, double pedestal, general metal
09GM2	Desk, typist, general wood
09GM3	Desk, clerical, single pedestal, general metal
09GM4	Desk, L-unit adaptable, single pedestal general metal
09GM6	Attachment desk, all types, general metal
09GW1	Desk, double pedestal, general wood
09GW2	Desk, typewriter, general wood
09GW5	Desk, special purpose, general wood
09GW6	Attachment, desk, clerical/typist, general wood
09GZ5	Desk, special purpose, metal/wood
09MW1	Desk, double pedestal, wood, modern
09MW2	Desk, typewriter, single pedestal, wood, modern
09MW6	Attachment, desk, clerical/typist, wood, modern
09TW1	Desk, double pedestal, executive, traditional wood
09UW1	Desk, double pedestal, wood, unitized
09UW2	Desk, typist, single predestal, wood, unitized
09UW6	Attachment, desk, clerical/typist, unitized, wood
10GM1	Carrel, desk mounted, metal, contemporary
11XX1	Furniture/furnishings, not elsewhere classified
12GM1	Safe, burglary-resistant, combination lock
14CM1	Stand, typewriter, drop leaf with caster, metal cont.
14CM2	Stand, telephone, with shelves and/or door, metal
14GM1	Stand, typewriter, drop leaf with casters, general metal

14GM2	Stand, office machine, 26" high, general metal
14GW1	Stand, office machine, approx 26" high, general wood
14GW2	Stand, telephone, general wood
14GW3	Stand, dictionary, general wood
14TW1	Stand, typewriter, executive, traditional, wood
15CM1	Table, office, all lengths, metal, contemporary
15CM2	Table, office, round, metal, contemporary
15GM1	Table, office all lengths, metal
15GM2	Table, drafting/light, general metal
15GM3	Table, folding, metal
15GM5	Table, conference
15GW1	Table, office, all sizes, general wood
15GW2	Table, drafting, general wood
15MM3	Table, end, metal, modern
15MW1	Table, ofc, over 60", wood, modern (to include all shapes)
15MW2	Table, office, 60" or less, wood, modern
15MW3	Table, end, wood, modern
15MW4	Table, coffee, wood, modern
15TW1	Table, over 60" long, executive, traditional, wood
15TW2	Table, 60" or less, executive, traditional, wood
15TW3	Table, end, wood, executive, traditional, wood
15TW4	Table, coffee, executive, traditional, wood
15UW1	Table, office, wood, unitized
250ZZ	Work station (modular)
251ZZ	Accoustic cover (printer)
252ZZ	Tractor feed
31GM1	Cabinet, filing, letter size, 4-drawer, metal
31GM2	Cabinet, filing, letter size, 5-drawer, metal
31GM3	Cabinet, filing, letter size, fire resistant, w/combination
31GM4	Cabinet, filing, all other letter size cabinets, metal
31GM5	Cabinet, filing, legal size, 4-drawer, metal
31GM6	Cabinet, filing, legal size, 5-drawer, metal
31GM7	Cabinet, filing, legal size, fire resistant, w/combination
31GM8	Cabinet, filing, all other legal size cabinets, metal
32GM1	Cabinet, special purpose, EAM card, metal
32GM2	Cabinet, special purpose, microfilm, metal
32GM3	Cabinet, special purpose, tub file, metal
32GM4	Cabinet, special purpose, forms storage, metal
32GM5	Cabinet/rack, special purpose, film/ADP, metal
32GM6	Cabinet, special purpose, visible record, slide trays
32GM7	Cabinet, special purpose, card, other than EAM cards
32GM8	Cabinet, special purpose, hanging, map and plan metal
32GM9	Cabinet, special purpose, other
34GM1	Sectional cabinet, file, card, metal
34GM2	Sectional cabinet, file, EAM cards, metal
34GM3	Sectional cabinet, file Map and plan, metal
34GM5	Base, for all sectional cabinets, metal

34GM6 Top, got all sectional cabinets, metal
35CM1 Cabinet, lateral file, 2 drawer, metal, contemporary
36CM2 Cabinet, lateral file, 3 drawer, metal, contemporary
36CM3 Cabinet, lateral file, 4 drawer, metal, contemporary
35CM4 Cabinet, lateral file, 5 drawer, metal, contemporary
36CM6 Cabinet, lateral file, spec. purp., multi-tiers (with or w/o)
53CZZS Auto typewriter, CRT/VDT
53MZZS Auto mag card
53WZZS Auto word processor
54FZZS Adding and subtracting machine, electric
54HZZS Calculator, printing and/or listing, desk model
54LZZS Calculator, portable (hand-held)
54PZZS Calculator, programmable
55HZZS Photoprint machine
56AU1 Archiving Unit
56FZZS Foot pedal
56GZZS Adaptor for dictating and transcribing equipment
56HZZS Hand control for dictating equipment
56MZZS Condenser Microphone
57GZZS Microcassette companion inserts
58CE6 Cassette eraser
58GZZS Dictating and transcribing machine, desk model
58HZZS Transcriber
58IZZS Dictating and transcribing machine, portable
58KZZS Record player, electric
58LZZS Recorder, audio sound (stereo)
58QZZS Telephone message recorder-reproducer (answering device)
58RZZS Recording device, sychronizer/producer, records and/or play cassettes
58UZZS Telephone, facsimile machine (telecopier)
59GZZS Typewriter, electric (standard, executive and equal)
59JZZS Typewriter, electric, memory
59KZZS Typewriter, electric (Selectric I, II, correcting or equal)
59LZZS Typewriter, manual (except portable)
59PZZS Typewriter, portable, electric or manual
59SZZS Typewriter, special purpose
61KZZS Signature machine
71GZZS Public address set (e.g. lectern type, bull horn, speaker etc.)
71HZZS Radio, Receiver
71JZZS Telecommunications/telegraph/telephone equipment
71LZZS Amplifier, electronic
71MZZS Intercommunication set (to include page boys)
71NZZS Teletype machine, floor model or desk top
71PZZS Television set
72LZZS Time stamp, recorder
72MZZS Scale, weighing
72NZZS Optical instrument and equipment, binoculars, field glasses
72QZZS Refrigerator, size unspecified

73LZZS	Microfilm Duplicator
73KZZS	Reader/filler, film strip inserter
73KZZ1	Agency microphone
73LZZS	Microfilm processor
73MZZS	Microfilm reader, aperture cards
73NZZS	Microfilm reader, roll film
73PZZS	Microfilm reader, fiche
73QZZS	Microfilm reader/printer, aperture cards
73RZZS	Microfilm reader/printer, roll film
73SZZS	Microfilm reader/printer, fiche
74GZZS	Camera, photographic
74HZZS	Photographic printer
74JZZS	Photographic enlarger
74LZZS	Photographic finishing equipment
74RZZS	Photographic dryer
74UZZS	Lens, Camera
75GZZS	Binder, book
75JZZS	Printing and dry-developing machine, diazo type
75KZZS	Duplicating machine
75LZZS	Reproducing machine, electronic facsimile (Xerox)
75UZZS	Punching and drilling machine, paper
75WZZS	Laminating machine
75XZZS	Paper cutter, powered or manual
76XZZS	Tool box
77FZZS	Dispenser, tape
77JZZS	Lift/truck/cart (mail or printed matter) powered or unpowered
77SZZ	Shelving, metal sectional, approximately 3 feet wide
78GZZS	Projector, motion-picture
78HZZS	Projector, overhead
78IZZS	Projector, rear screen
79JZZS	Synchronizer, slide or film
78KZZS	Projector, slide or film strip
79LZZS	Speed reading machine
78MZZS	Synchronizer, film
78NZZS	Film viewer, editor/projector
78RZZ	Lectern, with or without electrical attachments or sound equipment
78TZZS	Training equipment, other (e.g. screens, mockup, cutaway)
78UZZS	Video, monitor, viewer, screen
78VZZS	Video, tape recorder, for replay
78WZZS	Video camera, portable
78XZZS	Video, view finder
81EZZS	Card reader
81FZZS	Keypunch machine
81IZZS	Sorter, ADP
82GZZS	Terminal, without printer
82HZZS	Terminal, CRT
82JZZS	ADP central processing unit

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Instructions

FLRA 1810

SUBJECT: The FLRA Occupational Safety and Health Program

A. **POLICY.** It is the policy of the Federal Labor Relations Authority (FLRA) to provide a comprehensive and continuous safety and health program to ensure the safety and health of its employees.

B. **REFERENCES.** This Instruction reflects the requirements of:

1. 29 CFR Part 1960, "Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters,"

2. Executive Order 12196, "Occupational Safety and Health Programs for Federal Employees; and

3. FLRA Instruction 3861, "Injury Compensation."

C. **DEFINITIONS.**

1. **Accident** is an unintended or unplanned occurrence that results in injury to personnel, property damage, production interference, or a combination of these conditions.

2. **Designated Agency Safety and Health Official** (DASHO) means the individual who is responsible for the management of the safety and health program with FLRA, and is so designated or appointed by the FLRA Chair.

3. **Fatality** is a death resulting from an injury (traumatic) or illness/disease (occupational).

4. **Illness/disease** means a physiological harm or loss of capacity produced by systemic infection; continued or repeated stress or strain; exposure to toxins, poisons, fumes, etc; or other continued and repeated exposures to conditions of the work environment over a long period of time. For practical purposes, an occupational illness/disease is any

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reported illness/disease verified by a certified medical physician as having been caused by a workplace condition that does not meet the definition of injury (traumatic).

5. **Injury (Traumatic)** is a wound or other condition of the body caused by external force, including stress or strain. The injury is identifiable as to time and place of occurrence and member or function of the body affected, and is caused by a specific event or incident or series of events or incidents within a single work day or work shift.

6. **Safety and Health Inspector** means a safety and/or occupational health specialist or other person authorized pursuant to Executive Order 12196, section 1-201(g), to carry out inspections, a person having equipment and competence to recognize safety and/or health hazards in the workplace.

7. **Safety and Health Official** (SHO) means an individual who manages the occupational safety and/or occupational health program at the organizational level below the Designated Agency Safety and Health Official.

D. **RESPONSIBILITIES.**

1. The Executive Director is the FLRA's DASHO and manages the FLRA safety and health program. The Executive Director may delegate authority to administer aspects of the program.

2. The Director of the Administrative Services Division (ASD) is the FLRA's SHO and is responsible for administering the Safety Program. In order to carry out these responsibilities, the ASD Director:

   (a) Investigates reports of unsafe or unhealthy work conditions, makes recommendations to the DASHO, and keeps those who initiated the report apprised of the status;

   (b) Ensures that appropriate records are kept by the FLRA to comply with OSHA reporting requirements;

   (c) Investigates accidents that result in serious personal injury or major property damage;

   (d) Reviews and analyzes reported FLRA occupational injuries, illnesses and accidents to consider the adequacy of actions to prevent the recurrence of such accidents, and makes recommendations for improvement where necessary;

   (e) Conducts safety training for supervisors and employees when workplace situations require such training;

(f) Reviews and evaluates all FLRA employee suggestions regarding occupational safety and health matters;

(g) Coordinates with the FLRA Equal Employment Opportunity (EEO) Director to determine proper accommodations to ensure a safe working environment for persons with disabilities;

(h) Contracts a Safety and Health Inspector to conduct periodic safety and health inspections of the workplaces within the FLRA; and

(i) Performs other safety and health assignments as directed by the Designated Agency Safety and Health Official.

3. The Director of the Human Resources Division (HRD) administers the Health Programs, which includes the Health Unit and the Employee Assistance and Federal Employee Injury Compensation Programs. To carry out these duties, the HRD Director is responsible for:

(a) Educating employees about these programs through published instructions and individual counseling;

(b) Counseling supervisors and employees regarding Federal Employee Compensation Act (FECA) claims and processing claim forms;

(c) Maintaining files of records, forms and any other pertinent information about the compensation programs, and annually providing the SHO with information on injury compensation to include in the Annual Report to the Department of Labor; and

(d) Providing guidance to management on actions taken against employees for negligence resulting in an unsafe or unhealthful work environment.

4. The Office of the Inspector General (OIG) investigates reports of restraints, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, and allegations of fraudulent claims filed under FECA.

5. Supervisors are responsible for:

(a) Ensuring employees are aware of safe workplace practices;

(b) Performing periodic safety and health reviews of their operations and taking prompt corrective action whenever unsafe or unhealthy working conditions or practices are noted; and

(c) Notifying the Administrative Services Division of alleged or known unsafe or unhealthy working conditions, hazards or practices.

6. All FLRA employees, and on-site personnel under contract to the FLRA, are responsible for:

(a) Using safe procedures while performing their duties;

(b) Notifying their supervisor (if a contractor, notifying the Contracting Officer's Technical Representative) immediately upon learning of unsafe or unhealthy working conditions or hazards with the following provisions:

(1) Employees not satisfied with the results of their notification of an unsafe or unhealthy working condition or hazard should contact the SHO.

(2) Employees can also file reports of unsafe and unhealthful working conditions directly with the Secretary of Labor, Washington, DC 20210 or to an OSHA Area Office nearest to the incident.

(3) Employees who believe that their report of an unsafe or unhealthy condition has resulted in restraint, interference, coercion, discrimination, or reprisal against them should report this in writing to the OIG or by calling the OIG Hotline on 1-800-331-3572.

(c) Reporting all on-the-job injuries/illnesses to their immediate supervisor.

E. **SAFETY PROGRAMS.**

1. Safety and Health Inspection. The SHO will contract for a Safety and Health Inspector to conduct periodic safety and health inspections of the workplaces within the FLRA, who will provide the SHO with a report of the inspection. ployment Opportunity (EEO) Director will be given the opportunity to participate in the inspections to determine whether or not the facility is accessible to persons with disabilities. The SHO will forward individual reports of the findings, along with appropriate recommendations, to the DASHO, EEO Director, UAE, and all FLRA Office Directors.

At the conclusion of an inspection, the Safety and Health Inspector will confer with the SHO, the UAE and EEO Director and informally advise them of any apparent unsafe or unhealthful working conditions disclosed by the inspection.

During any such conference, the SHO, UAE and the Equal Employment Opportunity Director will be afforded an opportunity to bring to the attention of the Safety and Health Inspector any pertinent information regarding conditions in the workplace.

2. Reports of Unsafe or Unhealthful Working Conditions. Any employee finding an unsafe or unhealthful working condition in FLRA-occupied space should immediately notify his or her supervisor, orally or in writing, of the unsafe or unhealthful working condition, and may request an inspection of the workplace. If an inspection is to be conducted the UAE will be notified and given an opportunity to participate in the inspection. A report of an unsafe or unhealthful working condition made under this instruction is not a grievance.

   (a) If the condition is not immediately correctable, the employee's supervisor should submit a copy of the employee's written report of the condition to the SHO.

   (b) If the employee has notified the supervisor orally, the supervisor should draft his or her own written report of the cited condition for submission to the SHO.

   (c) Upon request of the reporting employee, the supervisor will not disclose either the reporting employee's identity or the identity of any FLRA employee referenced in the written report.

   (d) If an inspection of the reported unsafe or unhealthful working condition has been requested, an inspection must be conducted: 1) within 24 hours for conditions representing potentially imminent danger; 2) within three working days for potentially serious conditions; and 3) within 30 working days for non-serious reported conditions. If the condition is immediately correctable, an inspection need not be conducted.

   (e) Unsafe or unhealthful working conditions found in the environment outside the FLRA office space should also be brought to the attention of the SHO who will notify the building management. Regional Offices should immediately notify the building management and then notify the SHO.

3. Corrective Action. The SHO should take action to correct the reported unsafe or unhealthful working condition without delay. If the SHO determines that no unsafe or unhealthful working condition exists, the SHO will notify the employee within 15 days of the determination not to conduct an inspection.

If the problem cannot be corrected promptly, the SHO will develop an abatement plan. The SHO will provide the UAE a copy of the abatement plan. The plan will set forth the following:

(a) The unsafe or unhealthful working condition.

(b) The corrective action to be taken.

(c) The date the corrective action will be completed or no later than 30 days from the date of the reported condition.

(d) The steps that are being taken in the interim to protect employees.

If the SHO concludes that the corrective action will take longer than 30 days, he or she will notify the DASHO.

4. Notice of Unsafe or Unhealthful Working Conditions. Once an unsafe or unhealthful working condition is determined to exist:

(a) The SHO must issue a written report to the DASHO describing in detail the findings and the procedures followed in the inspection.

(b) FLRA must issue a Notice of Unsafe or Unhealthful Working Conditions in writing no later than 15 days after the completion of the inspection for safety violations, or not more than 30 days after the completion of the inspection for health violations.

- The Notice must describe in detail the nature and degree of seriousness of the condition discovered, including a reference to the standard or requirement breached.

- The Notice must fix a reasonable time for abatement of the condition. A copy of the Notice must be sent to the official in charge of the work site where the condition was discovered, who should immediately post such Notice at or near the place where the condition was discovered.

- The Notice must remain posted until the unsafe or unhealthful working condition has been abated or for three working days whichever is later. A copy of all Notices will be maintained by the official in charge of the work site for a period of five years after abatement at the work site and made available to the Secretary of Labor upon request.

5. Logs of Reported Unsafe and Unhealthful Working Conditions. The SHO will maintain an ongoing log of all reported existing or potential unsafe or unhealthful working conditions. The log must contain a sequentially numbered case file, coded for identification, as well as a notation of:

   - the date and time the condition was reported;
   - a code/reference/file number;
   - the location of the condition;
   - a brief description of the reported condition;
   - classification of the condition (i.e., imminent danger, serious, etc.); and
   - the date and nature of corrective action taken.

6. New Space Survey. Before moving employees into new office space, the SHO will either contract for a safety and health inspector or inspect the space for any safety or health deficiencies. All identified safety or health deficiencies must be corrected before the employees may be moved into the new space.

7. Building Evacuation. The proper procedures for leaving the building during a suspected fire, bomb threat, or any other circumstance warranting evacuation of the FLRA headquarters' building are described in the FLRA Occupant Emergency Plan for 607 14th Street. The regions will follow the procedures set forth by either GSA or the agency responsible for such a plan in their respective buildings.

8. Occupational Accident, Illness or Injury Reporting. In the event of an accident, injury or illness caused by or in the workplace, the employee and/or supervisor should consult with the HRD Director on the reporting requirements. Also see FLRA Instruction 3861.

F. **DEATH OR MAJOR INJURY SPECIAL REPORTING PROCEDURES**. In the event an employee receives notification of an occupational accident or illness resulting in a fatality of an FLRA employee while on duty, or major injury resulting in the hospitalization of three or more employees, the following procedures will be followed:

1. The employee will report the following information within 8 hours to the HRD Director or their supervisor:

   - name(s) and position(s) of the deceased or injured person(s);

- time and date of the incident;
- extent of injuries suffered;
- location of the incident;
- cause of the incident;
- any actions taken by the FLRA;
- name and telephone number of person(s) to contact for further details; and
- brief description of the incident.

2. If the employee notifies the supervisor, the supervisor must immediately forward the information to the HRD Director.

3. The HRD Director will immediately inform the SHO of the fatality/multiple hospitalization, so that the SHO can orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration, U.S. Department of Labor, that is nearest to the site of the incident.

4. Within 8 hours of notification, the SHO will prepare a report for the DASHO covering the pertinent details and circumstances of the incident as outlined in paragraph F.1 above. The SHO will obtain any police reports, witness statements, etc. and ensure the information is included in the report.

5. If the DASHO determines that an investigation is warranted he/she will provide the Office of Federal Agency Programs, OSHA with a summary report of each fatal and catastrophic accident. The summary report will address the following:

   a. Date and time of the accident.
   b. Agency name and location.
   c. Consequences.
   d. Description of operations and the accident.
   e. Causal factors.
   f. Applicable standards and their effectiveness.
   g. Agency corrective/preventive actions.

6. The DASHO will ensure that this report is forwarded to the Office of Federal Agency Programs, OSHA.

7. The immediate supervisor will, no later than 10 working days after receipt of

knowledge of a death, transmit a completed Form CA-6, Official Superior's Report of Employee's Death, to the HRD Director.

G. **RECORD KEEPING AND REPORTING REQUIREMENTS.**

1. The FLRA HRD will maintain a log of any occupational injury, illness and fatality.

2. The FLRA SHO will utilize the information collected on the log to identify unsafe and unhealthful working conditions, and to establish program priorities.

3. The FLRA SHO will compile an annual summary of occupational injuries and illnesses as prescribed in OSHA publication 2014. The summaries will be based on the log of occupational injuries and illnesses maintained.

4. The FLRA SHO will provide the UAE a copy of the annual report.

5. All records and reports required by the 29 CFR Part 1960 will be maintained for 5 years following the end of the fiscal year to which they relate.

This Instruction is effective July 17, 1998.

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Solly Thomas
Executive Director

FLRA Instruction No. 3551. Overtime and Compensatory Time

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FLRA Instruction No. 3551

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

SUBJECT: OVERTIME AND COMPENSATORY TIME

Chapter I. General

A. **Purpose**. This Instruction sets forth the Federal Labor Relations Authority's (FLRA) policy and procedures regarding overtime work and compensation for such work.

B. **Cancellation**. This Instruction cancels FLRA Instruction 3530.1 on the same subject, dated June 27, 1983.

C. **Scope**. This Instruction applies to all FLRA employees except employees whose rate of basic pay equals or exceeds the maximum payable rate of GS-15 and students.

D. **References**.

1. Title 5, United States Code (5 U.S.C.), Chapter 55, Pay Administration, Subpart V, Premium Pay;

2. 5 U.S.C. Chapter 61, Hours of Work;

3. Title 5 Code of Federal Regulations (5 CFR) Part 550, Pay Administration (General) Subpart A, Premium Pay; and

4. 5 CFR Part 551, Pay Administration under the Fair Labor Standards Act.

E. **Definitions**.

1. Administrative work week means a period of seven consecutive calendar days within which the basic work week is scheduled. FLRA's administrative work week is Sunday through Saturday.

2. Basic work week for a full-time employee means the 40-hour work week established in accordance with 5 CFR 610.111.

3. Basic work requirement is a scheduled tour of duty for an employee on a flexible or compressed work schedule under 5 U.S.C. 6122 or 6127. Regardless of the type of schedule a full-time employee works, 80 hours in a pay or leave status must be accounted for in each biweekly pay period. Part-time employees must account for the number of hours in each biweekly pay period required by their approved work schedule.

4. Credit hours are hours that an employee on a flexible work schedule can work that are in addition to the employee's basic work requirement. Credit hours can be earned only Monday through Friday during the flexible time bands. Once supervisors have approved employees for a work schedule that includes credit hours, credit hours are worked at the employee's election.

5. Holiday work means overtime work performed by an employee during a regularly scheduled daily tour of duty on a designated holiday.

6. Irregular or occasional overtime means overtime work that is not part of an employee's regularly scheduled administrative work week.

7. Official duty station means a mileage radius of not greater than 50 miles from the employee's official duty station.

8. Overtime work means hours of work in excess of eight hours a day (other than hours worked on a flexible schedule) or in excess of the basic work week, as set forth in 5 U.S.C. 55 and 5 CFR 550.

9. Premium pay means additional pay authorized for overtime or holiday work, as set forth in 5 U.S.C. Chapter 55 and 5 CFR 550

10. Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by the employees. Basic pay excludes locality pay.

11. "Suffer or permit" means a supervisor's allowing an employee to work overtime that is neither directed nor approved.

F. **Policy**. Any overtime worked in the FLRA is considered irregular and unscheduled since no FLRA employees work overtime as part of their regular work schedules. Overtime will be worked only as necessary to accomplish mission, and as directed and approved by supervisors in accordance with the procedures set forth in this Instruction. Employees who are directed to work overtime will be compensated appropriately, within the parameters set forth in this

Instruction, either by premium pay or compensatory time off.

G. **Responsibilities**.

1. Authorizing officials are responsible for ensuring that overtime work is based only on mission necessity and, except in emergencies, that overtime work is directed and approved in writing and in advance. The following individuals are Authorizing Officials:

   a. For the Authority, the Chair and Members, the Chief Counsels, the Executive Director, the Solicitor, the Inspector General, the CADR Office Director, and the Chief Administrative Law Judge.

   b. For the Federal Service Impasses Panel (FSIP), the FSIP Chair and the FSIP Executive Director.

   c. For the Office of the General Counsel (OGC), the General Counsel, the Deputy General Counsel, the Director of Operations and Resources Management, and the Regional Directors.

   Authorizing Officials may delegate this authority, as appropriate. Delegations of this authority must be accomplished in writing, with copies provided to the payroll liaison unit of the Human Resources Division.

2. The Human Resources Director provides advice and assistance regarding policy and program administration.

3. Supervisors direct the appropriate use of overtime and ensure that accurate records with respect to Time and Attendance reporting are maintained.

4. Timekeepers work with employees and supervisors to accurately record and report overtime worked and compensatory time earned and used.

Chapter II. Overtime Pay

A. **Overtime Pay under 5 U.S.C. Chapter 55**. All authorized overtime is either paid or granted as compensatory time.

B. **Overtime Pay under the Fair Labor Standards Act (FLSA)**. In accordance with 5 CFR 551, employees who are covered by FLSA ("nonexempt" employees) are entitled by law to be compensated for overtime work that is officially directed and approved or

that is "suffered and permitted." Thus, supervisors must not allow ("suffer or permit") nonexempt employees to work overtime that is not officially directed and approved.

The Agency determines FLSA coverage as part of its job classification process, based upon the duties that the employee performs in comparison with the FLSA standards for coverage. Employees' position descriptions and Standard Forms 50 indicate whether they are exempt or non-exempt from FLSA.

C. **Crediting Hours of Overtime Work**. Overtime is paid in 15-minute increments. If overtime worked is performed in other than a 15-minute interval, odd minutes are rounded up or down to the nearest 15-minute interval. in accordance with 5 CFR 550.112(a)(2).

D. **Call-Back Overtime.** If an employee is required to return to the place of employment to work irregular or occasional overtime that was not scheduled, the work performed is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time off.

E. **Computation of Overtime Rates**.

1. An employee entitled to overtime pay under both FLSA and 5 U.S.C. Chapter 55 will be paid under the authority that provides the greater overtime entitlement in the work week.

2. For each employee whose rate of basic pay is at or below the minimum rate for GS-10 (including any applicable locality pay or special pay rate) or who is non-exempt from FLSA, the overtime hourly rate is 1-1/2 times the hourly rate of basic pay.

3. For each employee whose rate of basic pay exceeds the minimum rate for GS-10 and who is exempt from FLSA, the overtime rate is 1-1/2 times the hourly rate of basic pay at the minimum for GS-10, or GS-10, step 1.

4. To compute paid overtime, divide the rate of appropriate annual basic pay by 2087 hours, and multiple the quotient by one and one-half. Fractions of cents are rounded up to the next whole cent.

F. **Effect of Paid Absences on Eligibility for Overtime**. Absences due to paid leave do not affect an employee's eligibility to earn overtime during the same pay period. However, supervisors should not order and approve overtime work on the same day in which an employee has taken leave, except in very unusual circumstances.

G. **Effect of Unpaid Absence on Eligibility for Overtime**. An employee who is in unpaid absence status (i.e. leave without pay, furlough, absence without approved leave, or suspension) during the workday must make up an equal period of service outside the daily tour (but within the same workday as the nonpay status) before being eligible to earn overtime pay based on that day. Similarly, an employee must make up an equal period of service outside the basic workweek (but within the same administrative workweek as the nonpay status) before becoming eligible for overtime pay during that workweek.

H. **Hours of Work.**

1. Hours spent in travel status.

a. For FLSA exempt employees, time in travel status away from the official duty station that is outside the regularly scheduled administrative workweek is deemed to be overtime, as defined by 5 CFR 550.112(g). only when the travel: (a) involves actual performance of work while traveling; (b) is incident to travel that involves actual performance of work while traveling; (c) is carried out under such arduous and unusual conditions that the travel is inseparable from work; or (d) results from an event that could not be scheduled or controlled administratively, including the time required for travel to such an event and return to the official duty station.

b. For FLSA non-exempt employees, time spent in traveling is considered hours of work, in accordance with 5 CFR 551.422, if:

(1) An employee is required to travel during regular working hours;

(2) An employee is required to drive a vehicle or perform other work while traveling;

(3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

(4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

c. An employee covered by FLSA who is offered one mode of transportation and who is permitted to use an alternative mode of transportation (e.g., an employee who is offered an airplane ticket but prefers to drive), or an employee who travels at a time other than that selected by the Agency, is

credited with the lesser of:

(1) The actual travel time which is hours of work under 5 CFR 551.422; or

(2) The estimated travel time which would have been considered hours of work under 5 CFR 551.422 had the employee traveled in accordance with the plan offered by the Agency.

2. Time spent in training or attending a lecture, meeting, or conference.

a. Time spent in training is administered as follows:

(1) Time spent in training during regular working hours is considered hours of work.

(2) Time spent in training outside regular working hours is considered hours of work if:

(a) The supervisor directs the employee to participate in the training; and

(b) The purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position.

(3) Time spent in entry-level training or in connection with an internship or other career related work study training, or training under the Veteran's Readjustment Act (5 CFR 307) outside regular working hours is not hours of work provided no productive work is performed during such periods.

(4) Time that an employee spends performing work for the Agency during a period of training is considered hours of work.

(5) Time that an employee spends preparing for training is hours of work if the preparation time is:

(a) During an employee's regular working hours; or

(b) Outside the employee's regular working hours if the purpose of the training is to improve the employee's performance of the

duties and responsibilities of his or her current position.

(6) Time spent attending a lecture, meeting or conference is hours of work if attendance is:

(a) During an employee's regular working hours; and

(b) Outside an employee's regular working hours and either the Agency directs the employee's attendance; or the employee performs work for the Agency during such attendance.

3. Time spent adjusting grievances or performing representation functions.

(a) Time spent by an employee adjusting his or her grievance (or any appealable action) with the Agency during the time the employee is required to be on the Agency's premises is considered hours of work.

(b) "Official time" granted an employee by the Agency to perform representation functions during those hours when the employee is otherwise in a duty status is considered hours of work. This includes time spent by an employee performing such functions during regular working hours or during periods of unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

4. Time spent receiving medical attention.

(a) Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

(1) The medical attention is required on a workday that an employee reported for duty and subsequently became ill or was injured;

(2) The medical attention occurs during the employee's regular working hours; and

(3) The employee receives medical attention on the agency's premises, or at the direction of the agency at a medical facility away from the agency.

(b) Time spent taking a physical examination required for the employee's continued employment with the agency shall be considered hours of work.

5. Time spent in charitable activities. Time spent in public or charitable activities at the Agency's request or under the Agency's direction or control is considered hours of work. However, time spent voluntarily in such activities outside an employee's regular working hours is not hours of work.

Chapter III. Compensatory Time Off

A. **General.** Compensatory time earned and taken must be recorded on appropriate Time and Attendance records.

B. **Eligibility for Compensatory Time**.

1. FLSA Exempt Employees. Employees who are exempt from FLSA and whose rate of basic pay exceeds the maximum rate for GS-10 (i.e., GS-10, step 10) may be required to take compensatory time off in lieu of paid overtime. Exempt employees whose pay is equal to or less than GS-10, step 10, may not be required to take compensatory time in lieu of overtime pay, but may request compensatory time in lieu of paid overtime.

2. FLSA "NonExempt" Employees. At the request of an employee who is "NonExempt," a supervisor may grant compensatory time off from the employee's tour of duty -- or the employee's basic work requirement for an employee under a flexible work schedule -- instead of payment under 5 U.S.C. 555.501 for an equal amount of irregular or occasional overtime work. However, a supervisor may not require a "NonExempt" employee to be compensated for overtime with an equal amount of compensatory time off instead of payment.

C. **Time Limit on Using Compensatory Time**. Compensatory time must be used during the same leave year in which it was earned, except that time earned during the last six weeks of the leave year may be carried over into the next leave year. Compensatory time not used or carried over into the next leave year is compensated at the appropriate overtime rate for employees covered by FLSA. Compensatory time not used by FLSA exempt employees (other than that earned during the last six weeks of the leave year) is forfeited unless the failure to use the compensatory time is due to an exigency of the service beyond the employee's control. In this situation, the Agency decides whether or not the compensatory time will be carried over or paid at the appropriate overtime rate.

Chapter IV. Aggregate Salary Limitations

An employee may be paid overtime only to the extent that such compensation does not cause the employee's total basic and premium pay for any pay period to exceed the amount payable to an employee at the maximum rate of GS-15. The aggregate salary limitation also prohibits the granting of compensatory time when such compensation -- if it were paid -- would result in the employee's exceeding the amount payable at the maximum rate of grade GS-15 for any pay period. This limitation does not apply to employees covered by FLSA.

Chapter V. Program Administration and Evaluation

This Instruction is administered by the HRD. Questions and suggestions for improvement are welcome and should be addressed to the HRD.

This Instruction is effective: February 28, 1998.

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Solly Thomas
Executive Director

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

INSTRUCTION

FLRA 3511

SUBJECT: POSITION CLASSIFICATION

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FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

INSTRUCTION

FLRA 3511

Recertified 2/15/00

SUBJECT: POSITION CLASSIFICATION

CHAPTER 1. GENERAL PROVISIONS

A. **Purpose.** This Instruction describes the government-wide General Schedule (GS) position classification system and its implementation at the Federal Labor Relations Authority (FLRA or "Agency"). Position classification is a comprehensive and orderly Federal government-wide system for identifying GS positions by series and grade according to the subject matter of the work performed, level of difficulty and responsibility, and the qualification requirements of the work. The purpose of position classification is to ensure, across the Federal government, that substantially equal work earns substantially equal pay, and that similar positions receive similar treatment in personnel and pay administration.

B. **Cancellation.** This Instruction cancels and supersedes FLRA Instruction 3510.1, dated June 10, 1981.

C. **References.**

1. Title 5 United States Code (U.S.C.) Chapter 51, Classification

2. 5 Code of Federal Regulations (CFR) Part 531, Classification Under the General Schedule

D. **Scope.** This Instruction applies to all GS (and those that are still carried under the Performance Management and Recognition System, PMRS, pay plan "GM") positions at the FLRA.

E. **Agency Authority.**

1. General Authority. The FLRA has general authority to administer the GS classification system for its own positions. This authority is subject to:

   (a) Applicable laws and Office of Personnel Management (OPM) regulations;

   (b) Position classification standards published by OPM; and

   (c) Audit by OPM.

2. Specific Authority. The FLRA has specific authority to create, change or abolish positions, and to assign or reassign duties and responsibilities to employees. These specific authorities are not subject to control by OPM or any other agency.

F. **Policy.** The Agency's policy is that all positions must be accurately classified and position descriptions must be maintained current. Position descriptions must contain all information relevant to the position (e.g., supervisory status, position risk designation, competitive area and level, and FLSA status) and be numbered in accordance with the Agency's numbering system. Copies of current position descriptions must be maintained in the employees' Official Personnel Folders (OPFs). All employees should have copies of their current position description.

G. **Responsibilities.** Although the Human Resources Division (HRD) prescribes policy and administers and evaluates the Agency's position classification program, supervisors and employees are responsible for ensuring that position descriptions accurately reflect major duties being performed. If changes to the work have potential affect on the description of major duties, supervisors should notify the HRD and ask that the HRD schedule and conduct an audit of the position to determine any impact on the description of duties set forth in the position description and/or on the classification of the position.

CHAPTER II. POSITION DESCRIPTIONS

Each position at the FLRA is documented with a Position Description (PD). Position descriptions identify the work being performed in enough specificity to enable and support the position's classification. A position description is adequate if it states the current principle duties, responsibilities, and supervisory relationships for its proper classification. The position description also support other personnel functions such as recruitment, performance management, and career development.

Position descriptions do not attempt to describe all duties or the specific performance expectation for the position. This level of detail is documented and communicated to employees through documents and tools prescribed for the Agency's performance management plan.

CHAPTER III. CHANGES TO A CURRENT POSITION CLASSIFICATION

Classification determinations are the result of a comparison of the duties being performed against the OPM classification standards. The classification of any position may be subject to change when:

1. The duties and responsibilities change;

2. OPM changes applicable classification standards or guides, and/or

3. A position review or a classification appeal reveals that the position is misclassified.

FLRA positions are subject to review at any time to ensure that the position descriptions are current and adequate for classification and other personnel management purposes. FLRA positions must be reviewed if OPM issues new classification standards that are applicable. The HRD may initiate these reviews – for example, if OPM issues new classification standards, or supervisors and/or employees may request them.

1. If the HRD initiates the review, the classifier will notify the supervisor and the employee that a review is needed and will schedule the interview far enough in advance to enable both the supervisor and the employee to prepare. The HRD will provide both the

supervisor and the employee with a list of questions that are examples of the types of information that the classifier will be seeking during the position review interview. Following the interviews and review, the HRD will provide the supervisor and the employee with a written classification determination.

2. If a supervisor requests a review, he/she may submit any type of written request to the HRD, to include initiating a Standard Form 50 requesting a position review. With the request, the supervisor should summarize the new, expanded or changed duties. The summary may be the current position description annotated with changes or a list of the changes. The HRD will use this summary to prepare for the position review. As discussed above, the HRD will schedule the interview with both the supervisor and the employee far enough in advance to enable both to prepare. Following the review, the HRD will provide the supervisor and the employee with a written classification determination.

3. If an employee requests a position review, he/she should submit a written request through his/her supervisor to the Director, Human Resources Division. Upon receipt of the request, the HRD will schedule interviews with both the employee and the supervisor to determine the duties that are being performed. The HRD will schedule the interviews far enough in advance to enable the employee and the supervisor to prepare. Following the review, the HRD will provide the supervisor and the employee with a written classification determination.

CHAPTER IV. CLASSIFICATION APPEALS

A. **Appeal of a Downgrade Based on a Classification Decision.** An employee (or his or her representative) whose position is reclassified to a lower grade, which is based in whole or in part on a classification decision, is entitled to a prompt written notice from the Agency. This includes an employee who is eligible for retained grade and pay. The employee must file an appeal – within 15 days from the effective date of the downgrade in order to have the decision to downgrade corrected retroactively – in accordance with the procedures described below.

B. **Appeal of the Current Classification.** An employee (or his or her representative) who is dissatisfied with the current classification of his/her position, and who cannot or does not wish to resolve the dissatisfaction through a routine classification review as discussed above, may file an appeal regarding the grade, occupational series, and even the title of the position. Employees file appeals in accordance with the procedures described below.

C. **Procedures for Filing an Appeal.**

1. To the Agency. An employee who wishes to appeal the classification of his/her job to the FLRA should address the appeal, in writing, to the Human Resources Director. The appeal should set forth the reasons that the employee believes that his/her position is erroneously classified. Upon receipt of the appeal, the HRD will schedule an interview with both the employee (and his or her representative, if any) and the supervisor. At the conclusion of the review, the HRD will issue a written classification decision to the employee. The written decision will include the employee's right to appeal directly to the Office of Personnel Management (OPM).

2. To the OPM. An employee may appeal directly to OPM or through the Agency to OPM. If the employee files through the Agency, the Agency must forward the appeal to OPM within 60 calendar days of its receipt if:

   a. The Agency's written decision is not favorable to the employee; or

   b. The Agency has not acted on the appeal within this time frame.

   If the Agency's decision is favorable to the employee, the Agency need not forward the employee's appeal to OPM.

3. Request for Reconsideration. The Agency or an employee may request reconsideration of an OPM appellate decision. The request must be in writing and filed no later than 45 days after OPM issues the decision. This time limit may be waived under

exceptional circumstances by either the OPM Appeals Director or the Director of OPM.

D. **Nonappealable Issues.** The following issues are not appealable to the OPM:

1. The accuracy of the position description, including the inclusion of exclusion of a major duty;

2. An assignment or detail outside of the normally performed duties that are described in the position description;

3. The accuracy, consistency, or use of Agency supplemental classification guides;

4. The class, pay system, or grade of a position in which the employee is not officially assigned by an official personnel action;

5. A proposed classification decision;

6. The classification of an employee's position based upon position-to-position comparisons and not the classification standards; and

7. An OPM classification decision when there has been no change in governing classification standards or the major duties of the position.

E. **Cancellation of an Appeal.** An employee's appeal is canceled and the employee so notified in writing in the following circumstances:

1. The employee requests cancellation in writing;

2. The employee or his/her representative fails to prosecute by failing to furnish requested information or proceeding with the advancement of the appeal.

F. **Finality of Decision.** An OPM appellate decision is final unless OPM reconsiders it, at its discretion. There is no further avenue of appeal. The OPM decision constitutes a certificate that is mandatory and binding on all administrative, payroll, disbursing, and accounting officials of government. The FLRA must review its classification decisions for identical, similar, or

related positions to ensure consistency with the OPM certificate classification review.

CHAPTER V. PROGRAM ADMINISTRATION AND EVALUATION.

This Instruction is administered by the HRD. Questions and suggestions for improvement are welcome and should be addressed to the HRD.

This Instruction is effective _____

_____
Solly Thomas, Executive Director
Federal Labor Relations Authority

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3501.1

SUBJECT: POSITION MANAGEMENT

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FEDERAL LABOR RELATIONS AUTHORITY **REGULATIONS**

OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

FLRA 3501.1

06/10/81
Recertified 2/15/00

SUBJECT: POSITION MANAGEMENT

SECTION 1 - GENERAL PROVISIONS.

1. PURPOSE. The purpose of this regulation is to provide guidance in designing and structuring positions in the Federal Labor Relations Authority (FLRA) in such a way as to accomplish workload and assigned functions and responsibilities in the most productive, effective, efficient, and economical manner possible and/or practicable.

2. REFERENCES. Federal Personnel Manual, Chapter 312, "Position Management," Office of Management and Budget (OMB) Circular No. A-11, A-64, and OMB Bulletin No. 79-11.

3. OBJECTIVES. The objectives of position management in FLRA are:

   a. The establishment of a position structure which will best respond to FLRA needs by providing an optimum balance among mission needs, economy and efficiency of operations, utilization of skills, attraction and retention of a competent workforce, opportunity for employee development and progression, and employee motivation;

   b. The contribution to the Governmentwide objective of a continuing increase in employee productivity with a corresponding economy in the use of manpower and fiscal resources;

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OPI: OA(P)

FLRA Doc. 1087 (12/80)

c. The strict observance of employment ceilings;

d. The avoidance of positions which unnecessarily

(1) increase payroll costs,

(2) hamper effective utilization of essential or scarce skills, or

(3) distort the relative proportion of managerial and supervisory employees to total employees;

e. The compatability with and support of affirmative action, upward mobility, and equal employment opportunity programs;

f. The discontinuance of positions which become vacant if the duties can be redistributed, eliminated, or performed at a lower level without seriously affecting the accomplishment of essential functions;

g. The study of possibilities for improving position structure and consulting with and involving, as appropriate, personnel, budget, planning, management analysis, and other staff expertise; and

h. The ability to respond to externally-imposed requirements such as Presidential directives or OMB bullentins and circulars.

SECTION 2 - RELATIONSHIP TO BUDGET PROCESS. As required by OMB Circular No. A-11, as of FY 82, all agencies will prepare estimates relating to personnel requirements in terms of full-time equivalent employment. Until FY 82, ceilings on total employment will be administered as described in OMB Bulletin No. 79-11.

SECTION 3 - RESPONSIBILITY.

1. HEADS OF THE AGENCY. Final responsibility for the position management program rests with the Members and the General Counsel.

2. MANAGERS AND SUPERVISORS. All top level FLRA managers are responsible for position management within their organizations. Each subordinate manager and supervisor

is responsible for practicing good position management. All managers and supervisors having significant responsibility in the management of positions are to be evaluated on their performance in this area.

3. DIRECTOR OF PERSONNEL. The Director of Personnel is assigned responsibility for the development, implementation, and administration of the overall FLRA position management program. This includes coordinating necessary staff work, preparing periodic and annual status reports, and providing guidance, assistance, advice, and information to managers and supervisors at all levels of the Agency.

SECTION 4 - POSITION AUTHORIZATION AND EMPLOYMENT CONTROLS (Reserved). This section will be an adoption and implementation of the latest OMB or Presidential directive relative to such authorizations and controls. OMB Circular A-64 is the current guidance, but it is anticipated that OMB will issue more definitive authorization and employment controls in the near future.

SECTION 5 - VACANCY REVIEW. A vacancy review is a special review of the design of a position occasioned by its becoming vacant. It is conducted in essentially the same manner as a regularly scheduled position review except the review can be made in a climate that is as fee of personalities and special considerations as is possible once a position has been established. It is an opportune time to redesign the position to reflect changes that inevitably occur in all positions with the passage of time.

SECTION 6 - PROGRAM EVALUATION.

1. Position management is included as an item of coverage in the internal personnel management conducted by the Office of Personnel, Separate or special position management studies or reviews are conducted on a request or need basis.

2. Managers should conduct on a continuing basis overall position management assessments to identify those work assignments that should be eliminated or restructured.

SECTION 7 - REPORTING.

1. The Office of Personnel will report information to the Executive Director of the Authority, the Deputy General

Counsel and the Executive Director, Federal Service Impasses Panel (FSIP), on position management and position structure for the organization concerned and the impact on FLRA as an agency. The intent of this information is to provide the manager with status and trend data for planning and for comparative purposes.

2. As end of the fiscal year position management report shall be developed by the Office of Personnel. This report shall be completed no later than November 30 of each calendar year and shall incorporate all position management efforts and activities for the fiscal year.

This regulation is effective June 10, 1981.

/s
James J. Shepard
Executive Director

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3470.1A

SUBJECT: PROBATIONARY PERIOD FOR SUPERVISORS AND MANAGEMENT OFFICIALS

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FEDERAL LABOR RELATIONS AUTHORITY **REGULATIONS**

OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

FLRA 3470.1A

02/13/86
Recertified 2/15/00

SUBJECT: PROBATIONARY PERIOD FOR SUPERVISORS AND MANAGEMENT OFFICIALS

SECTION 1 - GENERAL PROVISIONS.

1. PURPOSE. This regulation implements the provisions of Federal Personnel Manual Chapter 315, subchapter 9. The regulation describes duties and responsibilities of positions which have been designated as supervisory/ managerial positions. Further, this regulation describes the procedures for evaluating the performance of newly selected supervisors/managers during their probationary period. The probationary period provides the Agency with an opportunity to assess the new appointee's development on the job and to return an employee to a nonsupervisory or nonmanagerial position without undue formality should circumstances warrant.

2. SCOPE. This regulations applies to all employees of the Federal Labor Relations Authority (FLRA) appointed for the first time to supervisory or managerial official positions at or below the GS-15 grade level after August 10, 1979.

3. REFERENCES. Title 5 U.S.C. Code, Section 3321; and Federal Personnel Manual Chapter 315.

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AG(A), AGF, AGFA, OCM, OC, CC

4. DEFINITIONS.

a. Managerial Positions. The incumbents of these positions perform the following duties and responsibilities: (1) direct the work of an organizational unit; (2) are held accountable for the success of specific programs; (3) monitor the progress of the organizational unit toward goals, periodically evaluating progress and making appropriate adjustments; and (4) typically perform the full range of managerial duties such as: determining goals; determining resource needs; develop plans for organizational changes; assess the impact on other organization programs; set policy for the organization managed; and deal with general personnel management policy matters affecting the organization managed, delegating authority to subordinate supervisors (when they exist) and hold them responsible for the performance of their organizational units. Managerial positions in this Agency will be identified at the grade 13 level or higher, and will be designated “GM” under the pay plan on Optional Form 8, Position Description.

b. Supervisory Positions. Incumbents of these positions preform supervisory duties and responsibilities with respect to three or more employees (exclusive of support employees, such as: technicians, secretaries, clerks, etc.). Supervisory positions in the Agency shall be so designated on Optional Form 8, Position Description (including the designation “GM” under “pay plan” for positions at grade 13 or higher.

5. POLICY.

a. The Agency will require newly appointed supervisors and management officials to serve a probationary period to provide a sound basis for making decisions on retaining employees in supervisory or managerial positions. The Agency will retain in supervisory or management official positions only those employees who successfully complete the probationary period. Once probationary periods are satisfactorily completed or waived, the employees cannot be

required to serve another such probationary period regardless of the number of positions or occupations held.

b. The probationary period will be long enough to effectively judge supervisory or managerial ability and to allow for:

(1) periodic formal review and discussion of the quality of supervisory or managerial performance; and

(2) identification of specific training needs

6. RESPONSIBILITIES.

a. The Director of Personnel is responsible for the development, maintenance, and administration of the agency-wide program for the evaluation of supervisors and mangers during their probationary period and will determine whether positions are those of a supervisor or management official.

b. The Executive Director/Administrator will be responsible for designating positions as supervisory or managerial at GS-13 and above for Authority positions; the Associate General Counsel for positions within the office of the General Counsel; and the Executive Director, Federal Service Impasses Panel (FSIP) positions. Additionally, these officials will be responsible for:

(1) implementing the program within their areas of cognizance;
(2) assuring that supervisors are aware of the importance of an effective probationary evaluation program; and
(3) advising whether positions are those of a supervisor or management official, or both.

c. Other responsibilities of supervisors and employees in direct connection with the evaluation and rating process are set forth in the appropriate paragraphs below.

SECTION 2 - PROBATIONARY PERIOD.

1. LENGTH OF PROBATIONARY PERIOD. The probationary period for a newly selected supervisor or management official is one year.

2. WAIVER OF PROBATIONARY PERIOD.

   a. The probationary period for newly-appointed supervisors cannot be waived.

   b. The probationary period for a management official may be waived only if:

      (1) the employee has successfully completed a probationary period as a supervisor;

      (2) the action is justified on the basis of the employee's demonstrated performance and experience; and

      (3) the Executive Director/Administrator of the Authority for Authority employees, the Associate General Counsel for General Counsel employees, or the Executive Director, FSIP, for FSIP employees approves the waiver in writing.

3. CREDITING SERVICE AS A SUPERVISOR OR MANAGEMENT OFFICIAL.

   a. Employees who, as of August 11, 1979, were serving or had served in a supervisory or management official position in any Federal agency are considered to have met the probationary period requirement. This means that a former supervisor will not be subject to a new probationary period as a supervisor, and a former management official will not be subject to a probationary period as either a supervisor or management official.

   b. Employees temporarily promoted to supervisory or managerial positions will not receive credit towards completion of a probationary period for the time served unless the temporary promotion is for a 90-day period or longer.

c. Service in a supervisory or managerial position that is interrupted during the probationary period is creditable toward the completion of another probationary period as follows:

(1) An employee who transferred, reassigned, or promoted to another supervisory or managerial position is subject to the probationary period prescribed for the new position. All continuous service in the former position ending within a one-year period prior to entry into the new position is creditable toward completion of the probationary period prescribed for the new position as follows:

(a) From one supervisory position to another –- creditable in full.

(b) From one managerial position to another –- creditable in full.

(c) From a managerial position to a supervisory position –- not creditable.

(d) From a supervisory position to a managerial position –- not creditable unless the employee qualifies for and has approved a waiver as described in Section 2, Paragraph 3.b.(1) above.

(2) Absence due to compensable injury or military duty for which the employee is entitled to restoration rights or priority consideration is creditable in full.

(3) All absences (except for (2) above) are creditable up to a total of 22 workdays. Aggregate absences in excess of 22 workdays will extend the probationary period by an equal number of days.

(4) When an employee is separated for cause or returned to a nonsupervisory or nonmanagerial position during the probationary period, the service does not count toward completion of a probationary period required under subsequent

appointment.

(5) Where these is a break in service (except for (4) above) or more than six months during a probationary period, no credit will be given for prior service in a subsequent probationary period.

(6) Employees detailed to supervisory or management official positions will not receive credit toward the completion of a probationary period for the time served unless the detail lasts three months or more.

SECTION 3 - PROBATIONARY PERIOD EVALUATIONS.

1. FREQUENCY OF PROBATIONARY PERIOD EVALUATIONS.

a. An interim written evaluation will be made at the end of the sixth month of the probationary period. The purpose of the interim evaluation is to inform the employees of their progress toward the successful completion of the probationary period and to identify training needs. This evaluation will be prepared and reviewed so that it may be discussed with the employee not later than five workdays after the close of the rating period. The employee will be given a copy of this evaluation.

b. The final probationary evaluation will be prepared for the entire probationary period. It will be reviewed and discussed with the employee not later than the last workday of the probationary period.

2. EVALUATION CRITERIA.

a. An employee will evaluated against criteria that are relevant to the job, in effect during the probationary period, known to the employee, and which the employee has a reasonable opportunity to meet.

b. The quality of performance necessary to meet the evaluation criteria of the job will be discussed with the employee by the supervisor when the employee enters the probationary period.

3. RECORDING PROBATIONARY PERFORMANCE EVALUATIONS.

a. If a probationary employee is serving in a supervisory position, a Probationary Performance Evaluation for Supervisors will be completed (see Attachment 5). If an employee is serving a probationary period as a management official, a Probationary Performance Evaluation for Management Officials will be completed (see Attachment 6). If the employee is serving in a combined supervisory and management official probationary period, both forms will be completed.

b. A Certification of Completion (see Attachment 7) will be completed and filed on the permanent side of the Official Personnel Folder at the time the employee successfully completes the probationary period.

SECTION 4 - FAILURE TO SATISFACTORILY COMPLETE THE PROBATIONARY PERIOD.

1. NOTICE.

a. The decision to return an employee to a nonsupervisory or nonmanagerial position after a reasonable amount of time under which the employee had an opportunity to perform will be initiated by the employee's immediate supervisor and must be concurred in by the next higher official.

b. An individual who is to be returned to a nonsupervisory or non-managerial position because of failure to successfully complete the probationary period will be given sufficient written rationale to make clear the basis for the Agency's action. In addition, the employee will be informed concerning the personnel action to be taken by the Agency in reassigning the employee to another position.

2. REASSIGNMENT TO ANOTHER POSITION.

a. Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for

reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in "b" below, to a position in the Agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

b. A nonsupervisory or nonmanagerial employee is demoted into a position in which probation under 5 C.F.R. 315.904, is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the position in which the employee was serving probation. The employee is eligible for repromotion in accordance with Federal Personnel Manual Chapter 335, Promotion and Internal Placement.

c. The Agency must notify the employee in writing that the employee is being assigned in accordance with these procedures. (See Attachments 1 and 2 for sample letters).

SECTION 5 - APPEALS AND GRIEVANCES.

1. ADVERSE ACTION APPEALS. The removal of an employee from a position as a supervisor or management official for reasons related to supervisory or managerial performance is not an adverse action and, therefore, is not appealable to the Merit Systems Protection Board (MSPB).

2. EQUAL EMPLOYMENT OPPORTUNITY APPEALS.

a. An allegation of discrimination due to race, color, religion, sex, national origin, physical handicap, or age in connection with an action returning an employee to a nonsupervisory or nonmanagerial position is to be processed in accordance with the FLRA Equal Employment Opportunity Regulation. The final Agency action on such complaints is appealable to the Equal Employment Opportunity Commission.

b. An allegation of discrimination due to marital status or partisan political affiliation is

appealable to MSPB.

3. GRIEVANCE PROCEDURES.

a. Agency actions under this directive are grievable in accordance with the provisions of the FLRA Administrative Grievance System.

b. Negotiated grievance procedures are not applicable to actions covered by this regulation.

This regulation is effective February 13, 1986.

_____
Jacqueline R. Bradley
Executive Director/Administrator

ATTACHMENT 1

SAMPLE DECISION LETTER

MEMORANDUM FOR (EMPLOYEE NAME AND LOCATION)

SUBJECT: Unsuccessful Completion of Probationary Period as a (supervisor/management official)

After a full and equitable consideration of your demonstrated skills as a (supervisor/management official) in the position of (title, series, grade) at (location), I have decided that you do not meet the minimum standard required for retention in your current position as a (supervisor/management official). In support of this decision, the following is provided:

1. You entered your probationary period on (date) and were counseled regarding the critical elements and the performance standards against which your progress as a (supervisor/management official) was to be evaluated by (name) on (date). A copy of these critical elements and performance standards is attached. (Attachment 1)

2. You were provided interim performance evaluation on (date) and (date) in which your progress was indicated. These evaluations were discussed with you by (names) on (dates). Copies of these evaluations are attached. (Attachment 2)

3. Based on the foregoing and your progress during the probationary period, I have concluded that your performance did not meet expectations to warrant your retention in a (supervisory/management official) position for the following reasons:

(List critical elements, standards and how deficient. Be as specific as possible regarding dates and counseling or training provided to help correct the deficiency.)

A copy of your final evaluation reflecting the above was discussed

with you by (name) on (date) and is also attached. (Attachment 3)

Effective the date of this memorandum you will be relieved of your (supervisory/management official) duties. You will retain your (grade) actions necessary to reassign you to a position at the same grade and pay as the one you left to accept the probationary position are completed. The personnel office will be in contact with you on this matter not later than 10 calendar days from the date of this memorandum.

I regret that the decision is not more favorable. However, I want to assure you that your failure to complete the probationary period successfully does not reflect adversely on your technical ability or your value to the Agency. You may continue to apply and you will receive consideration for vacant supervisory or management official positions.

The actions taken by this memorandum are considered to be adverse actions under the Civil Service Reform Act and thus are not appealable to the Merit Systems Protection Board. However, you have the right, under the grievance chapter of the FLRA's Personnel Management Manual, to grieve this decision, or if you believe that the action was based on illegal discrimination, you may file a complaint of discrimination in accordance with Equal Employment Opportunity regulation of the FLRA Personnel Management Manual.

XYZ
Supervisor

CC: Director of Personnel

ATTACHMENT 2

SAMPLE LETTER OF REASSIGNMENT

MEMORANDUM FOR (Employee Name and Location)

SUBJECT: Reassignment

As a result of (name) memorandum to you of (date) we have been in contact with you concerning your reassignment to a suitable vacancy. As a result of this and subsequent discussions, you will be reassigned to the position of (title, series, and grade) at (location). Your reassignment will be effective on (date).

ABC
Director of Personnel

ATTACHMENT 3

FEDERAL LABOR RELATIONS AUTHORITY

Probationary Performance Evaluation for Supervisors (Prescribed for Personnel GS-13 through GS-15)

Name: (Last, First, Middle Initial)_____

Office of Assignment:
_____

Present Position: (Title & Grade)
_____

Period Covered: (From - To)
_____

****

Evaluate the employee's past demonstrated performance in the present position for each of the element listed below and enter the appropriate rating in the block at the right of the element.

An Unsatisfactory rating in any one of the first eight critical evaluation factors or in the EEO evaluation reveals supervisory deficiencies which make the employee unsuited for continued employment in the position. A satisfactory rating in items one through eight requires that the employee be retained in the position. Evaluation factors one through eight must have a rating of satisfactory or unsatisfactory. Evaluation factors nine through eleven, although not affecting the final rating, are included to identify weaknesses in noncritical areas for later corrective action. Please mark (S) for Satisfactory, (U) Unsatisfactory, (N/A) for Not Applicable.

****

EVALUATION FACTORS

1. Plans work, sets priorities, and prepares schedules for completion of work by subordinates. _____

2. Assigns work to subordinates based on priorities, difficulty and requirements of the job, and the capabilities and grade of employees. _____

3. Assures work is accomplished on time, meet quality standards, and conforms to priorities set by higher-level authority. _____

4. Evaluates performance of subordinates. _____

5. Gives adequate advice, counsel, and instruction to employees on work and administrative matters. _____

6. Identifies developmental and training needs for subordinates and provides or makes recommendations for training. _____

7. Hears and resolves complaints from employees; refers more serious complaints and grievances to appropriate higher authority. _____

8. Maintains effective interpersonal relationships both in and outside the Agency. _____

9. When warranted, takes appropriate disciplinary measures, or recommends action in more serious cases. _____

10. Makes recommendations for appointment, promotion, or reassignment for positions, as appropriate. _____

SUPERVISORY PERFORMANCE IN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Evaluate how well the EEO program responsibilities have been carried out considering factors such as: (1) Supervisory authority, the size and nature of organization supervised, position structure, the need and opportunity to increase minority and female representation and the supervisor's specific responsibilities under the organization's Affirmative Action Plan; (2) Demonstrated fairness and sensitivity in the treatment of all employees regardless or sex, race, national origin, age, and religion when making recommendations/selections for promotion, reassignment, travel, training, awards, and choice of work assignments.

Satisfactory _____ Unsatisfactory _____

EVALUATOR' DECISION: Acceptable _____ Not Acceptable _____

****

COMMENTS:

****

TRAINING

The Federal Personnel Manual requires that newly assigned first level supervisors be provided 80 hours of supervisory training during their first two years as a supervisor. At least 40 of these 80 hours must be completed during the first 6 months. Training needs will be identified and scheduled as required.

Training Required
_____

Date Completed
_____

****

Signature Date	Evaluation
EVALUATOR: _____	1st. Interim: _____
REVIEWER: _____	2nd. Interim: _____
EMPLOYEE: _____	FINAL: _____

ATTACHMENT 4

FEDERAL LABOR RELATIONS AUTHORITY

Probationary Performance Evaluation for Management Officials (Prescribed for Personnel GS-13 through GM-15)

Name: (Last, First, Middle Initial)_____

Office of Assignment:
_____

Present Position: (Title & Grade)
_____

Period Covered: (From - To)
_____

****

Evaluate the employee's past demonstrated performance in the present position for each of the element listed below and enter the appropriate rating in the block at the right of the element.

An Unsatisfactory rating in any of the evaluation factors reveals managerial deficiencies which make the employee unsuited for continued employment in the position. A Satisfactory rating requires that the employee be retained in the position. All factors must have a rating of satisfactory or unsatisfactory. Please mark (S) for Satisfactory and (U) for Unsatisfactory.

****

Evaluation Factors

1. Identifies and analyzes problem areas determines whether new or revised policy statements are required. _____

2. Gathers date and conducts research relevant to the problem area. _____

3. Demonstrates an ability to interpret and understand divergent views relating to policy matters. _____

4. Develops alternative courses of action and assesses the advantages and disadvantages of each in arriving at final policy determination. Coordinates with affected parties. _____

5. Maintains effective interpersonal relationships both in and outside the Agency. _____

EVALUATOR' DECISION: Acceptable _____ Not Acceptable _____

****

COMMENTS:

****

TRAINING

Training needs will be identified and scheduled as required.

Training Required
_____

Date Completed
_____

****

Signature Date	Evaluation
EVALUATOR: _____	1st. Interim: _____
REVIEWER: _____	2nd. Interim: _____
EMPLOYEE: _____	FINAL: _____

ATTACHMENT 5

FEDERAL LABOR RELATIONS AUTHORITY

Supervisory/Management Official Probationary Period Certification of Completion

Name:
_____

Job Title:
_____

Location:
_____

Date:
_____

TYPE OF PROBATION

1) Supervisory:
_____

2) Management Official:
_____

3) Combined Management Official/Supervisory:
_____

DATES OF PROBATIONARY PERIOD

From - To:
_____

I certify that the probationary period indicated above has been successfully completed and I recommend the employee's retention.

SIGNATURE _____
_____

Supervisor:

Approved (Reviewer's):_____

DATE

_____

_____

PROCUREMENT POLICY AND PROCEDURES

CHAPTER I. GENERAL PROVISIONS

A. PURPOSE. This Instruction establishes the Federal Labor Relations Authority's (FLRA) procurement policy and responsibilities, and implements the Federal Acquisition Regulations (FAR).

B. REFERENCES.

1. Federal Acquisition Regulation Systems (FAR), 48 C.F.R.

2. Federal Property Management Regulations, 41 C.F.R. Chapter 101. 2.

3. Office of Federal Procurement Policy Action, 41 U.S.C. 414(3).

C. SCOPE. This Instruction applies to all procurement actions initiated by the FLRA.

D. CANCELLATION. Federal Labor Relations Authority Procurement Policy and Procedures Regulation, 4410-1A, dated June 30, 1988.

E. DEFINITIONS.

1. Acquisition. Acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated.

2. Competition Advocate. An individual responsible for promoting the acquisition of commercial items; promoting full and open competition; challenging requirements that are not stated in terms of functions to be performed performance required or essential physical characteristics; and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

3. Contract. A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, is in writing. In addition to bilateral instruments, contracts include, but are not limited to: awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

4. Contracting. Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

5. Contracting Office. An office that awards or executes a contract for supplies or services and performs preaward and postaward functions not assigned to a contract administration office.

6. Contracting Officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

7. Delivery Order. An order for supplies and services place against an established contract or with other Government agencies.

8. Federal Acquisition Computer Network (FACNET). The Government-wide Electronic Commerce/Electronic Data Interchange (EC/EDI) operational capability for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

9. Funds Availability and Approval. Availability of funds is indicated by assigning an appropriation code to a request and the signature of the Director of Budget and Finance Division (FMD), or a designee, who has the authority to approve the obligation of funds for a specific amount and particular purpose.

10. Government-wide Commercial Purchase Card. A purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

11. Interagency Agreement. An agreement with a Government agency to provide goods or services.

12. Micro-Purchase. An acquisition for supplies or services (except construction), the aggregate amount of which does not exceed $2,500, except that in the case of construction, the limit is $2,000.

13. Senior Procurement Executive. The individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

14. Simplified Acquisition Threshold. Means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in 10 U.S.C. 101(a) (13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the term means $200,000.

15. Task Order. An order for services placed against an established contract or with Government sources.

16. Technical Review Panel. Individuals appointed to review and evaluate contract proposals for which evaluation factors are used.

F. POLICY**.** It is the FLRA policy that applicable laws and regulations related to obtaining supplies or services from Government sources and from contracts of other Government agencies will be complied with prior to any procurement action. When sources outside the Government furnish supplies or services, all purchases and acts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent. The FLRA fully supports the Federal policy of fostering minority-owned small business by awarding contracts, where practicable and feasible, through the Small Business Administration 8(a) Program. No contract shall be entered into unless all applicable requirements of law, Executive Orders, and Government-wide regulations, whether or not incorporated or referenced in the Federal Acquisition Regulations have been met.

Most Federal agencies, including FLRA, **do not**, have authority to enter into contracts for personal services. Such contracts are characterized by the likelihood that a Government Officer or employee will have close, continual supervision and control over contractors' employees.

CHAPTER II. AUTHORITIES AND RESPONSIBILITIES

A. Head of Agency. The Chair, as Chief Executive Officer, is responsible for:

1. Approving all requests for supplies, equipment, services (excluding printing) and interagency agreements and task orders which exceed $25,000;

2. Designating a Competition Advocate as required by Section 20 of the Office of Federal Procurement Policy Act and Subpart 6.5 - Competition Advocates in the FAR;

3. Appointing a Director of Small and Disadvantaged Business Utilization as required by the Small Business Act and Subpart 19.2 - Policies in the FAR; and

4. Designating the FLRA Senior Procurement Executive as required by section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) responsible for management direction of the acquisition system of the agency, including implementation of the unique acquisition policies, regulations, and standards of the agency.

B. Executive Director. The Executive Director is authorized to:

1. Approve all requisition requests for goods and services which exceed the limitations cited below which have a total estimated value of $25,000 or less;

2. Convene a Technical Review Panel for a specific procurement when deemed appropriate; and

3. Appoint Contracting Officers authority to purchase goods and services over $50,000.

C. Director, Administrative Services Division. The Director, Administrative Services Division (ASD) is authorized to:

1. Approve requisition requests for central supply room stock items within approved allowance levels;

2. Convene a Technical Review Panel, in coordination with the Executive Director, for a specific procurement when deemed appropriate;

3. Approve printing requisitions without dollar limitation;

4. Approve purchase orders and contracts; and

5. Appoint Contracting Officers to purchase goods and services under $50,000.

D. Director, Information Resources Management Division. The Director, Information Resources Management Division (IRMD) is authorized to approve technical specifications for all requisitions for software, hardware and IRM services.

E. Authority Members, General Counsel, Cost Center Managers. The following officials are authorized, within the limits stated below, to approve requisitions for supplies, equipment, and services (including printing) which are part of their approved allowances or part of the agency's overall financial plan:

Position	Limitation*
Chair	Unlimited
Executive Director	25,000
Authority Member	25,000
Chair, FSIP	25,000
General Counsel	25,000
Deputy General Counsel	5,000
Director of Operations and Resource Management	5,000
Executive Director, FSIP	5,000
Chief Counsels	1,000
Chief, ALJ	1,000
Director, CADR	1,000
Director of Case Control	1,000
Inspector General	1,000
Solicitor	1,000

*(including options for additional quantities or for extended terms, and/or total systems life costs).

F. Redelegation Authority. The authorities outlined above may be redelegated. Those with approving authority of $25,000 may only redelegate amounts up to $5000. All redelegations must be in writing and must state the dollar or commodity/service limitations associated with the

redelegation. A copy of each such redelegation shall be sent to the Director, Administrative Services Division.

CHAPTER III. CONTRACTING AUTHORITY AND RESPONSIBILITIES

A. Appointment of Contracting Officers.

1. The Executive Director and the Director of Administrative Services may appoint, as Contracting Officers, those agency personnel who, by experience and training, are deemed to be qualified in procurement matters in accordance with the criteria established in Section 1.603-2 of the FAR. Contracting Officers are delegated the authority to enter into, make determinations and decisions about, and take other actions with respect to purchases, contracts, leases and other contractual procurement transactions. No contract shall be entered into unless the Contracting Officer ensures that all requirements of law, Executive Orders, regulations, and all other applicable procedures, including clearances and approvals, have been met. In addition, contracting officers shall ensure that sufficient funds are available: for obligation; ensure that contractors receive impartial fair and equitable treatment; and request and consider the advice of specialists in budget, law, information resources management, and other fields, as appropriate.

2. Officials with General Authority to Act as Contracting Officers. The Executive Director may act in the capacity of Contracting Officer for the Agency, where one of the Contracting Officers(s) appointed under the authority of paragraph l above is absent, or at times when it is otherwise deemed necessary to the Government's best interest. The Inspector General may act as a Contracting Officer to obtain services for audits, studies, analyses and other services to carry out the Inspector General Act provisions (Section 6 (a) 9).

B. Responsibilities. All purchases, contracts, leases and other contractual procurement transactions, must be approved at one level above the person preparing the procurement action.

CHAPTER IV. PROCUREMENT THRESHOLDS

Simplified Acquisition. Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases below the micro-purchase threshold), unless requirements can be met by using required sources of supply under Part 8 of the FAR (e.g., Federal Prison Industries, Committee for

Purchases from People Who Are Blind or Severely Disabled, and Federal Supply Schedule contracts), existing indefinite delivery/indefinite quantity contracts, or other established contracts.

A. Each acquisition (non-FACNET and FACNET) of supplies or services from a commercial source that has an anticipated dollar value exceeding $2,500 and not exceeding $100,000, is reserved exclusively for small business concerns and shall be set aside in accordance with Subpart 19.5 of the FAR. Pricing must be obtained from at least three sources.

B. Simplified acquisition procedures for contracts actions exceeding $50,000 after December 31, 1999, shall not be used unless the office's agency has certified full FACNET capability in accordance with FAR Part 4.505-2.

C. Each contract award over $25,000 using commercial sources, must be made public by announcing the award in the Commerce Business Daily fifteen days prior to issuance of a solicitation.

D. Delivery Orders placed against an existing Federal Supply Schedule (FSS) requires pricing from at least three other Federal Supply Schedule contractors. There is no requirement, however, to make the award public. The threshold for these purchases is dependent upon the threshold established in the FSS contract.

E. Purchases made at or below the micro-purchase limit may be accomplished without securing competitive quotations if the prices quoted are considered to be fair and reasonable. This can be determined by reviewing pricing for previously procured supplies and services. Purchases must be distributed equitably among qualified suppliers.

Government-wide commercial purchase card is the preferred means to purchase and pay for micro-purchases, purchases made under Part 8 procedures, purchases made under existing indefinite delivery/indefinite quantity contracts, or from other established contracts through interagency agreements.

F. Blanket Purchase Agreements (BPAs). This agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see FAR Subpart 16.7 for additional coverage of agreements). See FAR Subpart 13.202 circumstances under which contracting officers may establish BPAs.

G. Interagency Agreements - Prior to making procurement through an Interagency purchase agreement, the FLRA will prepare a "Determination and Finding" document which will include the following principles:

1. Use of an interagency acquisition is in the best interest of the government,

2. The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source, and

3. One of the following three statements:

   a. The procurement will be made under an existing contract of the servicing agency for like items/services,

   b. The servicing agency has contracting expertise not available in the FLRA, or

   c. The servicing agency is specifically authorized to make such procurement for other agencies.

CHAPTER V. SOLICITATIONS FOR PLANNING OR INFORMATIONAL PURPOSES

Generally the FLRA will solicit bids, proposals, or quotations only where there is a definite intention to award a contract. However, in some cases, information may be solicited for planning purposes. In such cases it will be made clear that the FLRA does not intend to award a contract on the basis of a request, or otherwise pay for information solicited. The Contracting Officer will determine in writing that a solicitation for information and planning is justified and approved by the Procurement Executive.

CHAPTER VI. UNSOLICITED PROPOSALS

All unsolicited proposals received by the FLRA shall be forwarded immediately to the Director, Administrative Services Division. Acknowledgment and evaluation of unsolicited proposals will be handled in accordance with FAR Subpart 15.5. The Administrative Services Division shall maintain a record of such proposals by date of receipt and type of supplies/services available. If there is a request for the type of contractual services offered in unsolicited proposals, the proposals will be released to the office having responsibility for reviewing and evaluating the proposals.

CHAPTER VII. UNAUTHORIZED CONTACTS WITH COMMERCIAL FIRMS OR INDIVIDUALS SEEKING TO DO BUSINESS WITH THE FLRA

A. Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the

conduct or outcome of the acquisition. However, individuals must be aware of conflicts of interest restrictions outlined in FAR Part 3.104.

B. Employees not identified in Chapter 2 may not commit the FLRA to expenditures and may face the consequences of having to pay any such cost(s) that their actions or promises, implied or otherwise create.

C. All requests for procurement action(s) will be submitted in accordance with the procedures set out in Appendix A, Requisitions for Supplies, Equipment, Services, Publications, and Forms, FLRA Form 80.

CHAPTER VIII. "CUT OFF DATE" FOR PROCUREMENT REQUESTS

In the last quarter of each fiscal year, a series of "cut off dates" for receiving requisitions will be established. This will allow the staff of the Administrative Services Division sufficient time to properly process all actions prior to expiration of funding authority for the fiscal year. Procurement requests will not be processed after the "cut off date" established unless approved as an exception. If a requisition is submitted after the appropriate "cut off date," it will be forwarded to the Executive Director for approval, and if approved, the requisition will be processed as an exception to the established "cut off date."

CHAPTER IX. BEGINNING OF THE FISCAL PROCUREMENT REQUESTS

Some contracts for items expire at the end of one fiscal year and must begin on the first day of the new fiscal year (e.g., magazine and newspaper subscriptions, maintenance agreements, Federal Express, etc.). Requests for these requirements must be submitted to the Administrative Services Division no later than August 1 of each year. The requisition will include the new fiscal year appropriation as well as the new year requisition number, and it must also include the following statement "Subject to availability of appropriated funds."

Questions related to this Instruction should be referred to the Administrative Services Division.

This Instruction is effective September 14, 1998.

Signed by
Solly Thomas, Executive Director
Federal Labor Relations Authority

APPENDIX A

REQUESTS FOR SUPPLIES, EQUIPMENT, SERVICES, PUBLICATIONS AND FORMS

PREPARATION. FLRA Form 80[1] is a five-part form, and shall be prepared as follows:

Block 1. **Requisition Number**: Insert the requisition number of the originating office.

Block 2. **Date of Requisition**: Insert the date prepared.

Block 3. **Date Needed**: Insert a realistic date on which you need the items or services. This date is subject to change if the Contracting Officer deems that it will limit competition or if delivery of the items or services procured cannot be accomplished in that time frame.

Block 4. **Originating Office**: Self-explanatory.

Block 5. **Name and Telephone Number of the Originator**: Insert the name and telephone number of the person who can furnish additional information concerning the items being requisitioned.

Block 6. **Delivered To**: Insert ordering office and address where delivery should be made.

Block 7. **Appropriation Chargeable**: Insert the appropriation/cost center/object class.

Block 8. **Requesting Office Authorized Signature**: The signature of the person who is certifying to the need for the item.

Block 9. **Approving Office Signature**: The signature of the person authorized to commit funds, in accordance with Section 2 of this Instruction.

Block 10. **Financial Management Approval**: Certification by the Budget and Finance Division of the availability of funds.

Block 11. **Item Number**: Number all items order, i.e., 1, 1, 3, 4, etc.

Block 12. **Description**: A complete description must be given for all items/services ordered, sufficient to clearly identify items/services required. When necessary, possible or applicable,

---

[1]This form shall not be used to request printing requirements.

include performance requirements, physical limitations, and specifications or drawings. A part or stock number should be included, if known. This information is essential to ensure the requesting office receives the type and quality goods or services required.

Block 13. **Quantity**: Show for each item the quantity desired.

Block 14. **Unit of Issue**: Show for each item, the unit of issue as shown by the manufacturer's or supplier's catalog (i.e., ea, ream, doz., etc.).

Block 15. **Unit Price**: Enter unit price of the items ordered, if known. Otherwise, an estimated price should be entered, if possible.

Block 16. **Total Cost**: Multiply number in Block 13 by the number in Block 15.

Block 17. **Do Not Complete**: This block is for the use of the Administrative Services Division.

Block 18. **Receiving Report Signature and Date**: The user, who is responsible for the acceptance and inspection of the items or services received, signs and dates the receiving report (yellow copy of the FLRA Form 80) upon receipt.

Block 19. **Signature Authorizing Purchase**: The signature of the Contracting Officer.

DISTRIBUTION OF FLRA FORM 80. The preparing office will retain copy 2 of the requisition, and forward all remaining copies to the Administrative Services Division. If the item being purchased is either computer hardware or software, the originating office must forward the remaining copies to the Information Resources Management Division for approval. IRM will then forward the copies to ASD. After required certifications are received by the designated approving officials, ASD will forward the requisition to the Financial Management Division (FMD) for funding. Once approved for funds availability, FMD will forward requisition to ASD who will take action to satisfy the requisitions.

DELIVERY SCHEDULES. Requisitions should be submitted early enough to allow adequate time for processing by the procurement office and delivery by vendors. The time required to transmit the request to the procurement office, the time involved in making the purchase, and the vendors ability to respond to the purchase order all effect the delivery time.

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, DC

INSTRUCTION
FLRA No. 3860

SUBJECT: PROFESSIONAL LIABILITY INSURANCE

Table of Contents

PROFESSIONAL LIABILITY INSURANCE

A. GENERAL PROVISIONS.

1. Purpose. The purpose of this Instruction is to prescribe policies and procedures for the implementation and administration of professional liability insurance for eligible employees of the Federal Labor Relations Authority (FLRA). Federal supervisors and management officials may be held personally liable for illegal actions performed within the scope of their employment. In the event that the U.S. Department of Justice (DOJ) determines that it is in the interest of the government to represent the employee, professional liability insurance can supplement this representation by covering private attorney fees and costs incurred by the employee in the defense of any claims that DOJ opts not to defend. It may also be used in those instances when DOJ does not defend the supervisor or management official.

2. Scope. All FLRA supervisors and management officials are covered by this Instruction, including Senior Executive Service employees, Presidential Appointees, Senior Level employees, and Administrative Law Judges, as long as the incumbent serves in the capacity of supervisor or management official as defined by 5 U.S.C., Subpart F, Subchapter I, subsection 7103(10). Employees on detail or temporary promotion to a supervisory or management official position are eligible to be reimbursed, pursuant to this Instruction, for insurance for the period they are in the covered supervisory or management official capacity.

3. Policy. Current law requires partial reimbursements to eligible FLRA employees for professional liability insurance. The statute specifies that employees are eligible for the partial reimbursement of professional liability insurance if they meet the definition of supervisor or management official as stated in 5 U.S.C., Subpart F, Subchapter I, subsection 7103(10).

The Agency shall use funds appropriated for salaries and expenses to reimburse eligible employees for up to one-half the cost of their professional liability insurance policies, but not to exceed a total of $150 per year.

4. References.

a. Treasury and General Appropriations Act, 2000, P.L. 106-58, 113 Stat. 430, 477 (1999) (codified at 5 U.S.C. note prec. 5941 (2006))
b. Title 5, U.S.C., Subpart F, Chapter 71 Labor-Management Relations, Section 7103(a)(10) and (11)

5. Definitions.

a. Certifying official. The Agency official who is responsible for determining employee eligibility for reimbursement.

b. Qualified employee. An employee who meets the definition of supervisor or management official as designated in Title 5, U.S.C. 7103:

Supervisor. An individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

Management official. An individual employed by an agency in a position, the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

c. Professional Liability Insurance. Insurance which provides coverage for:

(1) Legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual while in the performance of such individual's official duties as a qualified eligible employee; and

(2) The cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual's official duties as a qualified eligible employee, and other legal costs and fees relating to any such administrative or judicial proceeding.

d. Proof of purchase. A copy of the insurance bill indicating that it is for professional liability insurance, the period of the policy, the full amount of the policy, and a paid receipt for the full cost of the insurance is required for proof of purchase. If the employee paid for the insurance by check, the canceled check will serve as proof of purchase; the employee must submit a copy of both sides of the canceled check for Agency records. If the employee paid for the insurance by credit card, a copy of the credit card statement may serve as proof of purchase. A letter from the insuring agent also may suffice as proof of purchase.

6. Responsibilities.

a. Employees:

(1) make personal judgements concerning their liability, need for coverage, and purchase of personal liability insurance. They may consult with Office of the Solicitor staff for information that might assist them in reaching their decisions about vulnerability and appropriate coverage;

(2) locate insurance providers and negotiate insurance policy coverage;

(3) submit SF-1164, Claim for Reimbursement for Expenditures on

Official Business to the appropriate certifying official, who in turn submits the forms to the Budget and Finance Division (BFD) requesting reimbursement for purchased insurance;

(4) submit suitable proof of purchase of insurance policy so that reimbursements by the Agency can be made; and

(5) assure that the liability insurance policy does not lapse in order to avoid breaks or gaps in coverage.

b. Certifying officials:

(1) determine whether the duties of a position description result in the incumbent meeting the definition of supervisor or management official;

(2) ensure that a copy of the insurance bill indicating that the coverage is for professional liability insurance is attached to the SF-1164, and that a copy of a paid receipt for the insurance coverage is included;

(3) review insurance policies to ensure that they do not contain additional insurance benefits other than permitted by the authorizing statute; and

(4) approve the SF-1164 certifying that the payment claimed is proper, is for up to one-half the amount of the insurance, not to exceed $150, or disapprove the claim, if excessive or for other appropriate reasons.

c. The Solicitor's Office: The Solicitor's Office responds to employee questions and renders advice regarding vulnerability to liability and the need for coverage.

B. PROGRAM REQUIREMENTS.

1. Determining Need for Insurance. The employee will decide whether to purchase liability insurance and the amount of coverage needed.

2. Application Procedures. The employee:

a. requests reimbursement by submitting an SF-1164 through the appropriate certifying official and the Solicitor, to BFD, entering in Section 6 column "c" the following language: "Professional Liability Insurance Partial Reimbursement. Total cost of the insurance is $ xx." The employee then records in the "miscellaneous" column, half the total cost of the insurance, but in any event no more than $150.00; and

b. presents proof of purchase of professional liability insurance with the application for reimbursement.

3. Recertification. Renewals and extensions of professional liability insurance policies

will follow the same procedure as the initial purchase. Employees must be re-certified by the certifying official as still meeting the legal definition of supervisor or management official to be qualified for reimbursement.

4. Termination of Eligibility. Eligibility for program participation terminates when an employee permanently moves within the FLRA from a covered (supervisor or management official) position to a non-covered position, or when the employee leaves the Agency.

C. REQUEST FOR REVIEW.

Employees may request a review of an FLRA determination regarding supervisory or management official status, or a determination that coverage purchased is excessive. A request for review will be made to the certifying official's supervisor. The request must be made in writing and include the reason(s) the employee believes that the selected level of coverage is appropriate in relation to his/her position in the organization and potential for liability.

D. RECORD MAINTENANCE.

Supporting documentation, such as decisions regarding the insurance coverage, any appeal and findings, and other pertinent records will be maintained by the Office of the Solicitor in accordance with Federal guidelines.

E. QUESTIONS.

Questions related to this Instruction should be referred to the Office of the Solicitor.

F. EFFECTIVE DATE.

This Instruction is effective on 7.16.12.

Sonna Stampone
Sonna Stampone
Executive Director

Federal Labor Relations Authority
WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION

FLRA No. 1312

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION	Issue Date: 11/3/2010

1312.1 **What is the purpose of this Instruction?**

This Instruction:

a. Defines the rules of behavior to protect Personally Identifiable Information (PII) from unauthorized disclosure and emphasizes the role of Federal Labor Relations Authority (FLRA) users in ensuring that the appropriate physical and technical safeguards are in place to protect all FLRA systems (both textual and electronic) that contain PII.

b. Establishes the FLRA Breach Response Team and provides procedures for reporting and responding to breaches of PII.

1312.2 Authorities for this Instruction.

a. Federal Statutes

(1) Privacy Act of 1974, as amended (5 U.S.C. 552a);

(2) Federal Records Act (44 U.S.C. 2108);

(3) Freedom of Information Act, as amended (5 U.S.C. 552);

(4) Federal Information Security Management Act of 2002 (44 U.S.C. 3541);

(5) E-Government Act of 2002 (44 U.S.C. 3501 note);

(6) Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520); and,

(7) Information Technology Management Reform Act (40 U.S.C. 1401 through 1503, Clinger-Cohen Act of 1996).

b. Office of Management and Budget (OMB) Issuances

(1) OMB Memorandum M-07-16 "Safeguarding Against and Responding to the Breach of Personally Identifiable Information" issued May 27, 2007;

(2) OMB Memorandum "Recommendations for Identity Theft Related Data Breach Notification" issued September 20, 2006;

(3) OMB Memorandum M-06-19 "Reporting Incidents Involving Personally Identifiable Information Incorporating the Cost for Security in Agency Information Technology Investments" issued July 12, 2006;

(4) OMB Memorandum M-06-16 "Protection of Sensitive Agency Information" issued June 23, 2006;

(5) OMB Memorandum M-06-15 "Safeguarding Personally Identifiable Information" issued May 22, 2006;

(6) OMB Memorandum M-05-08 "Designation of Senior Agency Officials for Privacy" issued February 11, 2005; and,

(7) OMB Memorandum M-03-22 "OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002" Issued September 26, 2003.

1312.3 Definitions

The following definitions apply to terms used in this Instruction:

a. Access – the ability or opportunity to gain knowledge of personally identifiable information, regardless of medium.

b. Breach – the loss of control, compromise, unauthorized disclosure,

unauthorized acquisition, unauthorized access, or any similar term referring to situations where individuals gain access or potential access to personally identifiable information, whether physical or electronic for an unauthorized purpose.

c. Identity theft –use of another person's personally identifiable information, such as social security number, date of birth, or mother's maiden name to commit fraud or any unauthorized act, which may include, but is not limited to, establishing credit, running up debt, or taking over existing financial accounts.

d. Information Technology (IT) – any equipment, software, or interconnected system or subsystem that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

e. IT Privacy – the protection of personally identifiable information (PII) that is collected from individuals through information collection activities or from other sources and that is maintained by FLRA in its IT systems.

f. FLRA User – employee, contractor, intern, volunteer, detailee, or other individual performing work for FLRA with access to FLRA IT systems, FLRA's operational records, or FLRA's accessioned records and donated historical materials that contain PII.

g. Personally Identifiable Information (PII)– any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual. In some instances PII overlaps with Privacy Act information. Please see Appendix A for Frequently Asked Questions (FAQs) About Personally Identifiable Information (PII).

1312.4 Responsibilities

a. Senior Agency Official for Privacy (SAOP)

(1) Maintains overall responsibility and accountability for ensuring

FLRA's implementation of information privacy protections in accordance with federal laws, regulations and policies relating to information privacy.

(2) Oversees FLRA's program for the protection of PII and reporting of, and response to, PII breaches, including convening meetings of the FLRA Breach Response Team (BRT).

(3) Develops and oversees agency-wide training and awareness programs for FLRA users on the appropriate physical and technical safeguards to ensure the protection of PII.

(4) Facilitates breach notifications, including the acquisition of credit monitoring and other services aimed at mitigating harm in response to a breach of PII.

(5) Maintains a case file for each breach incident reported to the BRT, including reports, analysis, recommendations and actions of the BRT.

(6) Evaluates the annual list of specially protected PII storage areas and PII holdings for FLRA's custodial units.

(7) Reviews agency extract logs (as described in par. 1312.11) on an annual basis for possible discrepancies or anomalies, and to ensure compliance with applicable laws and regulations.

b. Chief Information Officer (CIO)

(1) Conducts periodic risk assessments to identify areas of privacy-related vulnerabilities and risks that can be found among FLRA's IT systems.

(2) Works in conjunction with the SAOP in reporting and responding to PII breaches.

(3) Convenes meetings of the FLRA BRT in the absence of the SAOP.

c. Chief Information Security Officer (CISO)

(1) Responsible for managing the FLRA IT security program and

administers resources to ensure compliance with FISMA and other government-wide IT security policies through the development, implementation, and management of FLRA's IT security program;

(2) Works with system owners and the SAOP to resolve technical issues that impact on privacy.

(3) Supervises the Information Technology Security Staff which executes the IT security program.

(4) Conducts an immediate review of any FLRA owned or operated IT System when notified of an actual or suspected breach of PII from that system.

(5) Reports actual or suspected breaches of PII to the US Computer Emergency Readiness Team (US CERT) within one hour as set forth in OMB Memo 06-19, "Reporting Incidents Involving Personally Identifiable Information Incorporating the Cost for Security in Agency Information Technology Investments."

d. FLRA Breach Response Team (see par. 1312-17 for membership)

(1) Makes the final determination on the appropriate response to a suspected or confirmed data breach involving PII using the Risk Based Decision Framework outlined in OMB Guidance, "Recommendations for Identity Theft Related Data Breach Notification," issued September 20, 2006.

(2) Addresses potential privacy issues that impact FLRA programs and initiatives.

(3) Holds regular and recurring meetings to address privacy concerns and compliance reporting.

e. Inspector General

(1) Evaluates and provides recommendations for FLRA's PII compliance in accordance with the provisions of the Federal Information Security Management Act (FISMA) and related laws and regulations.

(2) Evaluates both suspected and confirmed breaches of PII to determine if there are any law enforcement implications.

f. Office heads ensure compliance with this Instruction in their respective offices.

g. Privacy Act system managers

(1) Responsible for managing personally identifiable information found in properly published system of records notices (SORNs) in accordance with the provisions of the Privacy Act.

(2) Works with the FLRA Privacy Act Officer to update existing SORNs or develop new SORNS as appropriate.

h. System administrators implement, operate, and monitor all FLRA IT systems in compliance with established protocols for control of PII access.

i. System owners retain a log of all data extracts and ensure the deletion of such extracts in accordance with the procedures outlined in 1312.11.

j. Supervisors

(1) Ensure that employees within their organization complete any required agency-wide PII training, including the required annual Information Systems Security Awareness Training.

(2) Advise employees of their responsibilities regarding the appropriate physical and technical safeguards for protecting PII within their organization, through office or job specific training for employees or others that work with PII as a part of their official duties.

(3) Promptly report any suspected mishandling or breach of PII according to established incident handing procedures.

k. FLRA Users (including users of IT systems for which FLRA is not the owner)

(1) Minimize the collection of PII to only that required to conduct FLRA business.

(2) Ensure PII is protected by appropriate safeguards to ensure security, confidentiality, and privacy.

(3) Complete annual agency-wide PII training and, as appropriate, office

or job specific training.

(4) Acknowledge, on an annual basis, specific responsibilities related to the protection of PII and consequences of the failure to properly protect PII.

(5) Immediately report any suspected or confirmed breach of PII.

(a) breaches from FLRA IT systems must be reported to the designated system owner.

(b) breaches from paper records must be reported to a supervisor immediately.

(c) suspected or actual loss of portable devices containing PII must be reported to a supervisor immediately.

(6) Maintain and delete any data extracts containing PII in accordance with par. 1312.11.

Part 1. Applicability

1312.5 What records does this directive apply to?

This Instruction applies to PII in any form or format, electronic or paper, found among FLRA's operational records.

Part 2. Rules of Behavior Relating to the Protection of Personally Identifiable Information (PII)

1312.6 What physical and technical safeguards must be in place to protect PII from unauthorized disclosure?

If users collect, maintain, handle, access, or disseminate PII in the course of performing their official duties, they must ensure that the information is properly protected.

a. Limit, where possible, the collection and use of PII.

b. During normal business hours, maintain information containing PII in areas accessible only to authorized individuals. After business hours, lock offices that collect or maintain PII.

c. Do not leave records containing PII open and unattended, or in any manner that would allow the data to be seen by an unauthorized individual.

d. Store documents containing PII in locked cabinets or locked offices when not in use.

e. Password protect electronic files containing PII when maintained within the boundaries of the agency network.

f. Encrypt all data on mobile computers/devices which carry agency data unless the data is determined to be non-sensitive , in writing, by the FLRA's Executive Director or the individual to whom he/she delegates that authority, in accordance with the requirement established in OMB Memorandum M-06-16. If the Executive Director or his/her delegatee, determines that encryption will impact on the integrity of the data, then he or she will implement access controls appropriate to the level of sensitivity for any electronic files containing PII, including data maintained on portable devises, where such data is being physically transmitted or stored outside the boundaries of the agency network.

g. When mailing material containing PII or preparing it for courier securely seal the envelope and take care to ensure that the envelope is addressed to the appropriate recipient.

h. Properly destroy materials containing PII, as authorized by the FLRA Records Schedule, by shredding, burning, deleting or by other authorized destruction methods that ensure that the data or record is unreadable or unrecoverable.

1312.7 What rules of behavior must users follow when remotely accessing FLRA-owned PII?

a. FLRA users who, for official FLRA business, need to remotely access FLRA-owned data containing PII must contact their supervisor and obtain written permission to work on PII from a remote location. This approval must be maintained with other Flexiplace documentation required by FLRA Instruction 3650, Flexiplace.

b. FLRA users with authorization to remotely access PII must employ the physical and technical safeguards outlined in 1312.6.

c.. FLRA users may not download data containing PII to their home computers.

d. FLRA users may not open or save files containing PII on their home computer or any public computer.

1312.8 What rules of behavior must users follow when PII is physically transported outside of the FLRA?

a. FLRA users who have a business need to transport data from FLRA's secured, physical perimeter must have written authorization from their supervisor.

b. The authorization must describe the work assignment that requires the use of PII and the type of PII data needed to complete the assignment.

c. Textual documents or electronic data containing PII must be accounted for, secured at all times, and returned to the FLRA upon completion of the assignment.

d. When PII data is transported on removable media [including, but not limited to, CD's, DVD's, USB Flash Drives (UFDs), also known as thumb drives)] and on portable/mobile devices, including but not limited to, external hard drives, laptops, and/or personal digital assistants, follow the guidance in par. 1312.9.

1312.9. What rules of behavior must users follow when they use a laptop, USB flash drive, or PDA containing FLRA-owned PII?

a. FLRA users with approved Flexiplace agreements must adhere to the policy outlined in FLRA Instruction 3650, Flexiplace.

b. These rules of behavior also apply to users in travel and local travel status.

c. PII data may only be accessed and stored on FLRA-issued and controlled devices.

d. FLRA users must not:

(1) Leave a laptop, USB flash drive or PDA containing PII unattended.

(2) Share the laptop, USB flash drive or PDA containing PII with unauthorized individuals.

(3) Check a laptop or other device containing PII with other luggage when traveling.

(4) Leave a USB flash drive containing PII in an unattended computer;

(5) Attach a USB flash drive containing PII to a key ring.

(6) Access a USB flash drive or other media containing PII from a personal or public computer.

(7) Remove any FLRA-owned device containing PII from the physical parameters of the agency without prior written authorization.

e. FLRA users must:

(1) Limit the use of laptop, USB flash drive or PDA when working with PII to situations authorized in a Flexiplace agreement.

(2) Encrypt PII contained on portable devices, including external hard drives, laptops, USB flash drives, PDA's, and other removable devices. If encryption will impact on the integrity of the data, use appropriate access controls, strong authentication procedures, and other security controls commensurate with the sensitivity of the PII data being transported.

(3) Immediately report any loss or theft of equipment containing PII to their immediate supervisors to initiate the breach notification process (par. 1312.14).

(4) Report any suspicious activity, suspected loss, or theft of PII to the OIG.

1312.10. What rules of behavior must users follow when sending an e-mail or fax containing PII?

FLRA users must:

a. Consider the sensitivity of the information and the impact of the loss of the PII before choosing to send PII via e-mail or fax.
b. Properly mark e-mails or faxes containing PII so that the recipient will be alerted to the need to protect the information. Warning notices must be prominent

on the document or e-mail, such as "PERSONAL INFORMATION – If you are not the intended recipient of the e-mail or fax, then you are prohibited from sharing, copying, or otherwise using or disclosing its contents."

c. Provide a point of contact should the e-mail or fax be received by someone other than an authorized recipient. Contact instructions such as "If you have received this e-mail or fax in error, please notify the sender immediately by reply e-mail or fax and permanently delete this e-mail or destroy this fax and any attachments without reading, forwarding, saving or disclosing them" must be prominent in the document.

d. Check to ensure that the e-mail address is correct before sending the e-mail.

e. Never send PII material to a personal email account.

1312.11 What procedures must be followed when extracting sensitive data from an FLRA-owned IT system containing PII?

a. Each system owner must notify the SAOP of any instances where computer-readable extracts or print outs of PII data are authorized and from which FLRA systems such extracts originated, including the reason for the extract (e.g., internal office use or for transmittal to another FLRA office or an external Federal agency for an authorized business purpose).

b. System owners must ensure that all extracts are logged, either in an electronic or paper-based format.

c. FLRA users who are recipients of a data extract must also maintain a log of each data extract received.

d. Each system owner must retain the log and provide a comprehensive list of extracts and the disposition of such extracts to the SAOP on an annual basis.

e. Extract logs must contain the following information:

(1) date and time of the extract;

(2) the name and component of the information system (e.g., software component, hardware component) from which the data is extracted;

(3) name of the user extracting the data and the business purpose for which the data will be used;

(4) the data elements involved; and

(5) length of time for which extracted information will be used.

f. Data extracts may be kept only for 90 days. After 90 days, the extract must be destroyed in a manner appropriate for the media.

g. If an extract needs to be kept longer than 90 days, then the log must indicate:

(1) the justification for retaining the extract longer than 90 days and the supervisory authorization for retaining the extract, and

(2) alternate disposition date for any extracted data kept longer than 90 days.

h. Logs must be provided to the SAOP on an annual basis to ensure compliance with OMB guidance.

1312.12 What are the penalties for failing to properly safeguard PII?

a. Users will be held personally accountable for their actions related to PII entrusted to them. Failure to comply with the stated rules of behavior may result in administrative penalties or criminal sanctions.

b. Supervisors are subject to disciplinary action for failure to ensure that their staff completes any agency-wide or job specific PII training or for failure to take appropriate action upon discovering a suspected or actual breach of PII.

Part 3. External Breach Notification

1312.13 What types of incidents may result in a breach?

a. Actual or suspected loss, theft, or improper disclosure of PII data in electronic or paper form.

b. Lost or stolen equipment, especially electronic devices capable of storing and retaining data, such as laptops, personal digital assistants (PDAs), UFDs, external hard drives or other electronic storage devices that are known or suspected to contain PII.

c. Inadvertent loss or unauthorized access to employee information consisting of names and social security numbers (including a temporary loss of control).

d. Inadvertent loss or unauthorized access to information relating to the public (including credit card information).

e. Incorrect delivery of PII information.

f. Using FLRA's IT resources in violation of FLRA's security policies, causing a compromise, breach or loss of control of PII.

g. Any other action that evades or bypasses FLRA's security controls.

1312.14 What action must a user take if he or she suspects a breach has occurred?

If a user suspects that a breach of any kind has occurred, then he or she must call or e-mail the designated system owner (for electronic systems) or the supervisor (for records in any media) within one hour of discovery. The user must provide the following information concerning the breach:

a. A brief description of the occurrence and the type of information that may have been breached.

b. The user who discovered the suspected breach and what action, if any, may have caused the breach.

1312.15. What action must the system owner or supervisor take when he or she has been informed of a suspected breach?

The system owner or supervisor must immediately inform the SAOP or CISO of the suspected breach.

1312.16. What must the SAOP and the CISO do when they have been informed of a suspected breach?

a. Consult with the system owner or supervisor to determine the nature of the incident;

b. Report the incident to the US Computer Emergency Readiness Team (US CERT) within one hour;

c. Report the incident to the FLRA Inspector General if the suspected breach involves possible theft, loss or unauthorized use of FLRA equipment; and

d. Consult with the other members of the FLRA Breach Response Team (BRT) to determine if a breach notification is required. See 1312.17.

1312.17. What is the FLRA Breach Response Team (BRT)?

a. The FLRA BRT is composed of officials responsible for addressing potential breaches of PII at the FLRA.

b. The SAOP is responsible for determining when it is appropriate to convene a meeting of the FLRA BRT. If the SAOP is unavailable, then the CIO makes the determination to convene a meeting of the FLRA BRT. The team includes:

(1) Chairman of the FLRA or designee;

(2) General Counsel of the FLRA or designee;

(3) Chairman of the Federal Service Impasses Panel or designee;

(4) CIO

(5) CISO

(6) SAOP

(7) IG or designee

(8) Counsel for Regulatory and External Affairs

(9) Other FLRA staff as appropriate, depending on the nature and scope of the breach in question.

1312.18. What factors must the BRT consider when deciding whether or not to provide a breach notification to individuals whose PII has been compromised?

a. The FLRA Breach Response Team must consider the following five factors, using the Risk Based Decision Framework (described in 1312.4d (1)), in making a decision to issue a breach notification to affected individuals:

(1) the nature of the data compromised and the level of risk in light of the context of the data and the broad range of potential harms that may result from disclosure;

(2) the number of individuals affected by the breach;

(3) the likelihood that the PII will be or has been used in an unauthorized

manner;

(4) the likelihood that the breach may lead to harm (e.g., mental or emotional distress, financial harm, embarrassment, harassment or identity theft); and

(5) FLRA's ability to mitigate the risk of harm to affected individuals.

b. If after considering these factors the BRT determines that there is minimal risk for the potential misuse of the PII involved in the breach, then the FLRA takes no further action.

c. If it is determined that there is a medium or high risk of misuse of breached data, then the FLRA issues a breach notification.

1312.19. What actions does the BRT take when it confirms a breach of PII?

Upon conclusion of the risk analysis outlined in 1312.18, if the BRT determines that the breach could pose issues related to identity theft or other possible areas of harm, then the BRT will review possible actions and implement a response action plan. Such actions include, but are not limited to:

a. If the breach involves government-issued travel or purchase cards, then steps will immediately be taken to notify the issuing bank. If the breach involves an individual's bank account numbers to be used for direct deposit of credit card reimbursements, government employee salary, or any benefit payment, then the FLRA will notify the bank and other entities that handle that particular transaction immediately. These actions will be followed by a notice to the affected individuals through the most expeditious means available;

b. If the breach involves the breach involves social security numbers or other highly sensitive information (e.g. a date of birth, home address, or mother maiden's name coupled with a social security number) then the BRT will determine whether credit monitoring services will be offered to the affected parties at FLRA's expense. If credit-monitoring services are required, they will be acquired through service providers on the General Services Administration (GSA) schedule. The service provider will issue notice and instructions to the affected individual, using language prepared by FLRA;

c. Review and identify systematic vulnerabilities or weaknesses in FLRA's information systems in order to establish privacy safeguards and mandate preventative measures to decrease the likelihood of subsequent breaches.

d. If the breach involves suspected criminal activity or possible fraud, waste or abuse, then the FLRA IG will determine how to investigate and will coordinate with appropriate Federal law enforcement agencies if necessary.

1312.20. When should the breach notification be made?

a. FLRA must provide notification as soon as the breach has been confirmed and it has been determined by the BRT that there is a medium or high risk of misuse of the breached information.

b. If a criminal investigation is initiated, then the BRT must coordinate all notices with the IG to ensure that the investigation is not compromised by the notice.

1312.21 When should a breach notification be accelerated?

If the Chairman of the FLRA determines, based on the information available, that there is an immediate, substantial risk of identity theft or other harm as a result of the breach, then he or she may provide notice to individuals affected by the breach or offer them credit protection services before the completion of a risk analysis by the BRT.

1312.22. When should a breach notification be delayed?

a. In some instances, law enforcement or national security considerations may require FLRA to delay notification in order to protect data or computer resources from further compromise or to prevent interference with the conduct of a lawful investigation or efforts to recover the data.

b. Any lawful request for delay in notification must state an estimated date after which the requesting entity believes that notification will not adversely affect the conduct of the investigation or efforts to recover the data.

c. When FLRA is unable to identify, with specificity, the affected individuals. In this instance FLRA may seek the assistance of a computer mining contractor or other professionals to assist in the retrieval of identifying information from a database, removable storage devise, or other media.

d. The final decision to delay notification rests with the FLRA Chairman in consultation with the BRT.

1312.23. Who should contact individuals affected by a breach of PII?

For breaches that involve:

a. fewer than 50 individuals, the breach notification must be issued jointly by the SAOP and the head of the office that maintains the breached information.

b. more than 50 individuals, the breach notification must be issued by the FLRA Chairman or his or her designee.

1312.24. What information should the breach notification contain?

The breach notification must be provided in writing (and in the appropriate language if affected individuals are not English speaking) and must contain the following elements:

a. A brief description of what happened, including the date(s) of the breach and of its discovery;

b. To the full extent possible, a description of the types of PII involved in the breach (e.g., full name, social security number, date of birth, home address, account number);

c. A statement whether the information was encrypted or protected by other means;

d. What steps individuals should take to protect themselves from potential harm;

e. What FLRA is doing to investigate the breach, mitigate losses, and protect against any further breaches; and

f. Who affected individuals should contact at FLRA for more information, including a toll-free telephone number, e-mail address, and postal address.

1312.25. What means of communication may be used to provide a breach notification?

a. The best means for providing notification depends on:

(1) the number of individuals affected;

(2) whether the breach concerns FLRA employees or the public;

(3) what contact information is available about the affected individuals; and

(4) the urgency with which the individual(s) affected need to receive notice.

b. The following types of notification may be considered by the BRT:

(1) First class mail is the primary means of informing an individual of a breach of PII.

(a) When FLRA has reason to believe that the address is no longer current, FLRA must take reasonable steps to update the address by consulting with other agencies or private entities to facilitate notice by mail.

(b) The notice must be sent separately from other mailings so that it is obvious to the recipient.

(2) Telephone. Telephone notification may be used to contact individuals in cases where urgency dictates immediate and personal notification or where a limited number of individuals are affected. Telephone notification must be followed with a written notification by postal mail.

(3) E-mail. E-mail notification may be used to contact individuals when no known mailing address is available and the individual has provided FLRA with an e-mail address and has expressly given consent to e-mail as an acceptable means of communication with FLRA. E-mail notification must contain all the information outlined in 1312.24

1312.26. What notification should be used when no contact information is available?

a. If all methods to locate a current mailing address for an individual affected by a breach of PII have been unsuccessful, then the FLRA may provide notice by posting the relevant information on the FLRA web site, www.flra.gov; providing notification to major print and broadcast media or through emergency Federal Register notice.

b. Decisions to provide this type of notice are made by the FLRA BRT.

1312.27. Under what circumstances does FLRA provide public notice of a breach?

a. At the discretion of the FLRA BRT, FLRA will provide notice concerning a breach of PII to the media when such notice assists the public in understanding the nature of the information breached or when the BRT determines that a breach has affected a substantial number of people.

b. If the BRT determines that the situation merits, then the FLRA may post information related to a breach on the FLRA web site, www.flra.gov, providing a

link to Frequently Asked Questions (FAQs) and other talking points to assist the public's understanding of the breach and the notification process.

1312.28. When will FLRA notify other agencies or public sector entities of a breach of PII?

a. Agencies and public sector entities are notified of a breach when that agency or public sector entity is affected by the breach or will play a role in mitigating the potential harms stemming from the breach.

b. FLRA responds to inquiries related to data breaches from such governmental agencies as the Government Accountability Office and Congress in conjunction with the BRT.

c. Contact will be made by the FLRA Chairman or a designee when the need for such notice is recommended by the BRT.

1312.29. What rules and consequences are associated with FLRA users who are responsible for causing a breach of PII?

a. FLRA users are held accountable for their individual actions related to the protection of PII. If the BRT determines that an FLRA user is responsible for the breach of PII, then the BRT will recommend appropriate administrative penalties to the immediate supervisor.

b. If the BRT determines that a supervisor is aware of a subordinate committing or causing PII breach incidents and allows such conduct to continue, then the supervisor will also be held responsible for failure to provide effective organizational oversight.

c. FLRA users who are responsible for causing a breach of PII will be subject to the penalties set out in FLRA Instruction 3752, Employee Discipline and Adverse Action.

1312.30. How are Breach Notification records created under this Instruction maintained?

The CIO will maintain the original records, and the SAOP will maintain copies thereof, for ten years after the end of the fiscal year when the records were created.

Sonna Stampone
Executive Director

11·3·10
Date

Appendix

Frequently Asked Questions (FAQs) About Personally Identifiable Information (PII)

1. What is Personally Identifiable Information (PII)?

PII, as defined by the Office of Management and Budget, refers to information that can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, biometric records, etc. alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

Different PII may have different levels of sensitivity and require different safeguards. For example, at FLRA, some PII is public (e.g., the names and titles of FLRA officials) and is not considered sensitive.

2. What are some common types of PII?

For the purposes of this directive, PII (whether on paper, in electronic form or communicated orally) includes the following types of information:

a. an individual's Social Security number alone; or

b. an individual's name or address or phone number in combination with one or more of the following:

(1) date of birth;

(2) Social Security Number;

(3) driver's license number or other state identification number, or a foreign country equivalent;

(4) passport number;

(5) financial account number; or

(6) credit or debit card number.

3. Does "PII information" in this context mean both electronic records and paper files?

Yes. Paper files include hard copies (the printed paper copies) of documents. Electronic records include documents saved on your hard drive, shared and personal drives on the FLRA network, and on disks, CDs, DVDs, and approved USB flash drives (UFD, also known as thumb drives). Electronic files also include email.

4. Does this directive apply to my personal records?

No. This directive applies to information that is collected, generated, or maintained by FLRA in the course of conducting official agency activities. Accordingly, you are not required to follow the procedures outlined in this directive when dealing with your own personal records, even if such records contain PII. For example, although the handling of your own personnel records is subject to these policies and procedures until they have been delivered to you, it is not necessary to obtain written permission from your supervisor to remove copies of your own personnel records from the building nor are you required to maintain your own personnel record in a locked file cabinet. Nonetheless, it is a good idea to properly safeguard such information for your own protection.

5. Where am I likely to find PII at FLRA?

You might find PII in all types of documents collected and maintained by the agency. Examples include:

a. FLRA case files;

b. Freedom of Information Act and Privacy Act requests;

c. Payroll time and attendance files and other personnel related items; and

d. Financial disclosure forms.

6. As long as I follow the rules with respect to safeguarding information, can I collect any information I want?

No. Under the Privacy Act of 1974 and other privacy laws, FLRA can only collect personal information that is necessary to conduct agency business. If you do not need the information, do not collect it.

7. How should I store paper files with containing PII?

If you are leaving work for the day, then you must store paper files containing PII in a locked file cabinet in your office or in a locked file room.

8. How should I store personnel information?

Keep any personnel information, which is not your own personal copy of your own PII, in locked file cabinets. There are no exceptions. Personnel information includes supervisors' copies of personnel documentation, such as:

a. correspondence, forms and other records relating to an employee's personnel records;

b. pending actions;

c. requests for personnel actions;

d. performance appraisals; and,

e. other records on individual employees.

9. What should I do with records containing PII that I am working on when I need to leave my office?

If you are leaving for lunch, a meeting, or other appointment, then:

a. "Lock" your computer by pressing the Ctrl-Alt-Delete keys and choosing "lock computer"; and

b. Put paper materials in a locked drawer or cabinet or

c. Close and lock your office door.

If you are leaving for the day or longer:

a. Close any electronic file or application that is open on your computer;

b. Log off the FLRA network;

c. Put paper materials in a locked drawer or cabinet;

d. Close and lock your office door; and,

e. Consistent with office protocols, return accessioned records, including electronic media to their appropriate storage location.

10. I have several boxes of operational records that contain PII. It is not practical to put those materials in a locked file cabinet at the end of every day — they will not fit and/or putting them away like that will interfere with my work. What should I do?

If you have a matter that is active and it is not possible or practical to put the documents in a locked file cabinet at the end of each day, then lock your office when you leave. If particular documents contain PII, do your best to segregate that information so that you can put it in a locked file cabinet. In addition, consider whether redacting the PII from your working documents is possible so that you can secure the originals containing sensitive PII, and work with the redacted copies. If you are not actively working with documents in your office containing PII, then store them in a locked file cabinet.

11. My "office" is a cubicle and therefore it is not possible to lock my office door. What should I do with files containing PII when I leave my area?

If you are leaving for an extended period of time, such as for the day, then place the files in a locked cabinet or store them in a locked file room. Also, lock your computer to secure any electronic files that contain PII. If you are leaving your space only for a short period of time, then lock your computer and cover any papers on your desk.

12. What do I have to do if I'm scanning paper documents containing PII?

Use caution when you scan a document that is automatically saved on a shared network drive assigned to that scanner. Because you cannot limit access to that shared drive, follow these steps:

a. Copy the document to the appropriate electronic storage space depending on the type of information in the document.

b. To prevent unauthorized access delete the document from the scanner's shared network drive.

13. Is it okay for janitorial and other maintenance staff to enter an area where PII is kept, especially after hours?

Yes. We must both secure information and get our work done. You can help protect our information by:

a. Closing any electronic file or application that is open on your computer;

b. Logging off the FLRA network;

c. Storing paper materials in a locked drawer or cabinet; and/or,

d. Closing and locking your office door.

14. What do I need to do before taking PII out of the building?

a. You need written permission to remove information if it contains PII. If you are working on an approved Flexiplace assignment, then the approval document should document your need to use PII to complete the work assignment. You must adhere to the appropriate physical and technical safeguards outlined in this directive while working with PII at a remote location (see par 1312.6).

b. In other circumstances requiring the use of PII, you must e-mail your supervisor with the date, a brief description of the information, and the reason you are removing it. This email, in combination with your supervisor's response, is sufficient as written permission.

c. If the removal involves an extract from an FLRA IT system, then you must log the extract in accordance with par. 1312.11.

15. I am going to another FLRA building for a meeting. I need paper documents containing PII for the meeting. Do I need permission to carry the documents between buildings?

No, but you must still adhere to appropriate security protocols for the protection of PII. Following the meeting, any documents containing PII must be returned to FLRA and secured as appropriate.

16. I am traveling in a car. Can I leave my laptop in a locked car? What about paper files containing PII?

Avoid leaving a laptop (regardless of whether it contains PII), portable storage media, or paper documents containing PII in an unattended vehicle. In extraordinary circumstances, if it is not possible to carry them with you when you leave the car, then lock the car, placing your laptop and other materials in the trunk so that they are not visible (prior to your arrival at your destination if practical). Treat your laptop like your wallet or purse.

17. I am traveling by airplane. What should I do with my laptop and/or paper files containing PII?

Keep your laptop (regardless of whether it contains PII) and any portable storage media or paper documents containing PII with you in your carry-on luggage. Never place these items in your checked luggage. If you have a large number of paper files that you cannot carry on the plane, then ship them to your destination via FedEx or U.S. Postal Service

("certified, return receipt") so that the files can be tracked. Occasionally, airlines may require that your laptop be included in checked luggage for security reasons. You must comply with airline requirements.

18. I often have to provide PII about myself or colleagues to gain access to another federal building. Do I have to get permission from my supervisor before I provide it?

You do not have to get permission when you are providing PII to another federal agency to gain access to their building or when it is contained in documents that are submitted to the State Department related to international travel.

19. I have the approval and authority to ship paper files to a third party. The paper files have PII. How should I ship the files?

Be sure it is necessary to ship documents containing PII. Ship the files via FedEx or U.S. Postal Service ("certified, return receipt") so that the files can be tracked. Tracked service does not reduce the number of individuals involved in the handling of the package and does not provide any extra type of security during the process. But it does provide additional documentation about the handling process, the date and time of delivery, and the signature of the person who actually receives the package. That information could be used to investigate lost, damaged, or compromised packages. Do not mark the outside of the boxes with any special warning, such as "confidential," because that just brings unwanted attention to the box. Keep an inventory of the documents you are shipping or a duplicate set so you can identify what documents are in the package in the event it is lost or stolen.

20. I need to fax documents containing PII outside of FLRA. Can I do this?

Yes. Faxing is an acceptable way to transmit documents. As always, redact the PII if possible before faxing the document. Double check that you have dialed the correct fax number before hitting the "send" button, and confirm that the intended recipient received the document.

21. Can I send documents containing PII through interoffice mail?

In general, it is best to hand deliver paper documents or electronic media containing PII to another FLRA employee or office, but you may send small amounts of PII in paper form through interoffice mail. Do not send a large volume of PII through interoffice mail. For example, you may send one employee's personnel action form to that person via interoffice mail, but do not send a stack of personnel action forms for an entire division or organization through interoffice mail. Never send a disk or other portable media containing PII through interoffice mail.

22. I need to email files containing PII to a colleague in another FLRA location. Am I permitted to do this and do I need to encrypt the files?
Yes. You may email electronic files between FLRA locations (HQ-region, region-region). The email system is one FLRA network and the files do not leave FLRA's control in the transmission.

FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE EXECUTIVE DIRECTOR/ADMINISTRATOR

WASHINGTON, D.C.

Regulations

FLRA 1323.1
3-13-86

SUBJECT: RECORDS MANAGEMENT PROGRAM

1. PURPOSE. This instruction establishes the Federal Labor Relations Authority (FLRA) Records Management Program covering the planning, controlling, directing, organizing, training, promoting, and other managerial activities involving information requirements, records creation, records maintenance and use, records preservation and records disposition.

2. REFERENCES.

   a. 44 U.S.C. Chapters 29, 31, and 33.

   b. 18 U.S.C. Section 2071.

   c. Federal Information Resources Management Regulation (FIRMR), sections 201-22.000, 201-45, and 36 C.F.R. Chapter 12.

   d. FLRA Regulations 1320.1, Internal Directives System, dated January 2, 1981.

3. SCOPE. This Regulation applies to all FLRA organizational elements.

4. BACKGROUND. The statutory basis for the management of Federal records are listed in paragraph 2. These authorities assign the general supervision of Federal agency Records Management Programs to the Archivist of the United States (National Archives and Records Administration (NARA). To assure preservation of valuable records, Federal agencies may not dispose of records until its proposed disposition standards have been approved by the Archivist of the United States and General Accounting Office.

5. POLICY. All FLRA records will be disposed of only in accordance with instructions contained in FLRA Records Control Schedules (currently under development). Records to be retired to a Federal Records Center must be coordinated with the FLRA Records Management Officer.

DISTRIBUTION: OPI:

6. OBJECTIVES. The Records Management Program has the following objectives:

   a. Ensure adequate documentation of all policies, decisions, and transactions.

   b. Ensure that FLRA records are properly organized, located, maintained and discarded.

   c. Expedite the systematic transfer of records from FLRA to federal records centers.

   d. Preserve records of continuing value and systematically dispose of all records authorized for destruction under approved Records Control Schedules.

7. DEFINITIONS.

   a. Record Material: Official government records consist of:

      (1) Correspondence either generated or received by an organizational element. It may be the original incoming communication; initialed copies of outgoing and interoffice correspondence; copies of reports, charts, graphs, backup papers for published management instructions, filled-in forms, and other papers needed for operations and transacting the agency's business, such as special studies for policy decisions, planning, legal decisions, etc.

      (2) Record copies of technical and administrative material including, but not limited to, drawings, photographs, magnetic media, agency publications and directives, microfilm, punched cards, etc.

   b. Reference Material: Material excluded from record material such as:

      (1) duplicate or multiple copies of those records described above,

      (2) published books,

      (3) library materials and periodicals, and

      (4) other printed reference materials.

   c. Files: A collection of record material and reference material, as defined above, resulting from specific transactions, operations, or processes.

d. Records Management Officer: The individual assigned responsibility for administering the Records Management Program for FLRA. The Records Management Officer is assigned to the Budget and Administrative Services Division, Office of the Comptroller.

e. Records Coordinator: A person appointed by the head of an organizational element to implement and oversee a continuing Records Management Program for a specific area of responsibility.

f. Records Custodian: An individual assigned responsibility for the operation of a specific official file station.

g. Official File Station: A specifically authorized and designated point in FLRA where official records are maintained and serviced by specifically assigned personnel. This includes any record-keeping media such as paper, photographs, microfilm, punched cards, magnetic media, etc.

h. FLRA Records Control Schedules: The administrative media used to obtain legal disposal authority for categories of FLRA records. When legally authorized by the Archivist of the United States and the General Accounting Office, provisions of these schedules grant continuing authority to dispose of identifiable categories of FLRA records listed herein.

i. Federal Records Center: An activity established for the receipt, maintenance, servicing, and disposition of Government records.

j. Office of Record: The office that has been assigned responsibility for maintaining the record copy.

k. Vital Records: Those records essential to the national defense or to the continuation of those Government operations necessary during and after an emergency.

l. Personal Records: Those records covering material pertaining solely to an individual's private affairs.

8. RESPONSIBILITIES.

a. The FLRA Records Management Officer will be responsible for:

(1) Conducting the FLRA Records Management Program to ensure the use of sound management practices.

(2) Providing advisory services, technical assistance and training to FLRA organizational elements on files and records management.

(3) Developing documentation standards.

(4) Developing and implementing the Vital Records Plan for FLRA.

(5) Reviewing and approving or disapproving all requests for filing equipment and nonstandard filing supplies prior to procurement action. Determination of approval or disapproval will be based on a physical survey and study of the office requesting approval, when deemed advisable.

(6) Preparing statistical reports as required, and conducting studies and inventories as necessary to acquire data needed to compile reports and provide information for special requirements.

(7) Maintaining liaison with appropriate Federal Records Centers.

(8) Conducting an annual review of disposition schedules and update periodically.

b. Heads of Offices will be responsible for:

(1) Designating a records coordinator for their immediate offices and for each major organizational element which has a responsibility for documenting information on paper, magnetic media, drawings, microfilm, or any other documentary material of record value regardless of its physical form or characteristics.

(2) Designating offices of record for all record material maintained within their respective organizations, and furnishing the Records Management Officer with the names and locations of organizational elements assigned this responsibility, with the description of the type of record material maintained.

c. Records Coordinators will be responsible for:

(1) Coordinating all matters pertaining to records management with the Records Management Officer.

(2) Maintaining a list of the assigned offices or record and the types of records maintained within their organizations.

(3) Maintaining a copy of each records management procedure issued.

(4) Designating records custodians to maintain official file stations.

(5) Providing assistance and training to the records custodians on recordkeeping systems, methods, and procedures.

(6) Accompanying the records management officer on records surveys in their immediate office and other files areas.

(7) Reviewing and validating requests for original or additional filing equipment or nonstandard filing supplies, and forwarding the request through the office chief and the Records Management Officer for approval prior to procurement action.

(8) Ensuring compliance with the FLRA Records Control Schedules and ascertaining that all records maintained in assigned offices of record are covered by the appropriate disposal instructions.

(9) Reviewing and approving or disapproving all Standard Forms 135, (Records Transmittal and Receipt) submitted by records custodians of retirement of records. Instructions for completing the Standard Form 135 are enclosed as Attachment 1.

(10) Contacting the Records Management Officer to obtain shipping instructions when retiring records to the Federal Records Center.

d. Records Custodians will be responsible for:

(1) Maintaining a specific file station.

(2) Preparing a list of all record material maintained, and furnishing a copy to the office records coordinator.

(3) Disposing of records in accordance with approved Records Control Schedules and furnishing the office records coordinator all copies of the completed Standard Forms 135 for review.

(4) Requesting retrieval of documents from the Federal Records Center from the Records Management Officer.

(5) Providing information concerning records management to the office records coordinator as requested.

e. Comptroller, under the staff supervision of the Executive Director/Administrator, after appropriate contact with the office head or Records Management Representative from each office is responsible for:

(1) Formulating FLRA policy and procedures concerning records management as defined in the Regulation;

(2) Representing FLRA in any arrangement with other agencies on matters relating to records management;

(3) Initiating such actions and surveys as may be necessary to evaluate the program and to ensure the objectives are acheived and standards are observed;

(4) Providing liaison with the National Archives and Records Administration (NARA).

9. UTILIZATION OF FILING EQUIPMENT.

a. Current records are to be maintained in required filing equipment by each organizational element to accomplish its mission. Unused portions of filing cabinets will not be used to maintain blank forms, publications, and office supplies when the drawer space is needed for files. Additional equipment will not be approved for issue when existing equipment is being used to house such material. Shelf filing equipment will be used for reference material, and for record material when feasible.

b. Letter size cabinets will be used for letter-size documents. Legal-size cabinets will be used only when a substantial number of the documents are of legal size. Five-drawer,steel,noninsulated letter-size cabinets and open-shelf filing equipment are standard for active correspondence and similar documents.

c. All requests for filing equipment and requests for nonstandard filing supplies will be submitted through the office records coordinator and forwarded to the Records Management Officer.

d. Requests for filing equipment and supplies will contain the following information:

(1) Description of the equipment or supplies (including the FSN if known).

(2) The place where the equipment will be located.

(3) Complete justification of need.

(4) When requesting filing cabinets, a statement that existing cabinets are being fully utilized.

10. PROGRAM ELEMENTS.

a. Major elements of the FLRA Records Management Program are:

(1) Creation of Records.

(a) Documentation Standards;

(b) Correspondence Management;

(c) Directives Management;

(d) Forms Management; and

(e) Reports Management.

(2) Organization, Maintenance, and Use of Records.

(a) Mail Management

(b) Files Management and

(c) Special Instructions concerning records utilization: Records will be preserved to protect, among other things, the legal and financial rights of the Government, and of persons directly affected by the Agency's activities. Employees are cautioned against retaining in their personal

possession records or documents in which they do not have an official interest or responsibility. This does not prohibit possession of documents reflecting an employee's status such as personnel actions and related papers. Unauthorized personal possession or use of any official document or record is prohibited and may subject an employee to administrative penalties.

(d) No employee is permitted to furnish any record or copy thereof, or give information contained therein except in the discharge of his official duties and in accordance with existing law, to any person not entitled to receive such information. Note: Criminal penalties for disclosure of confidential information and for the willful and unlawful concealment, taking, removal, mutilation, falsification, and destruction of Government records are contained in the U.S. Criminal Code (18 U.S.C. 1905, 2071, 641, and 285).

(3) Records Preservation. To assure compliance, each organizational element needs to document records of archival value to be identified properly for eventual transfer to NARA.

(4) Records Disposal. The legal basis for the disposal of records of the United States Government which have insufficient administrative, legal, research, or other value to warrant their further preservation is governed by the provisions of paragraph 2a. Records accumulated by FLRA in the course of the performance of official business will not be destroyed or removed without proper authority. Criminal penalties for willful and unlawful destruction and removal of public records are contained in 18 U.S.C. 2071.

(a) Disposal Schedules;

(b) Disposal by Destruction or Salvage;

(c) Transfer to Records Holding Area;

(d) Retirement to Federal Records Center.

(5) Vital Records (Indispensable Operating Records).

(a) Emergency Operating Records; and

(b) Rights and Interest Records.

(6) Files Equipment and Supplies.

(a) Filing Equipment Utilization;

(b) Use Standards and Criteria; and

(c) Expendable Supplies Used to Maintain Files

(7) Automatic Data Processing (ADP Records).

(8) Micrographics Management.

(9) Copy Management and Reprograhics

(10) Records Storage

(11) Paperwork Management

(a) Collections of information from the public; and

(b) Information Collection Budget.

11. EFFECTIVE DATE. This regulation becomes effective March 24, 1986.

Executive Director/Administrator

FLRA 1323.1
3-13-86

ATTACHMENT 1

INSTRUCTIONS FOR COMPLETING THE SF 135

Complete the following sections:

1. "Federal Archives and Records Center, General Services Administration" -- type below the complete address for the appropriate records center serving your area: For example, the National headquarters is as follows: "Washington National Records Center, Washington, D.C. 20409."

2. Transferring Agency Lisison Official - A signature is mandatory (include date).

3. Transferring Agency Lisison Official - (must be filled out)(agency contact) Name, office and telephone number.

4. Records Received by (signature and title)(date) - leave this space blank.

5. From - enter the name and complete mailing address of the office retiring the records (include room number if any and zip code).

6. Records Data: Accession Number (obtain numbers from the Records Officer at the National Headquarters, Washington, D.C., (202)382-0745). A separate accession number is required for each series of records listed on the form. An accession consists of records in one series that have the same disposal authority and date and that will be shelved in continguous space in the records center. This accession number consists of three parts.
   (a) RG(Record Group) - The NARA record group number - "146". This number is assigned by NARA to the records of an agency or subdivision of an agency to control transfers and other disposition actions.

   (b) FY (Fiscal Year) - Enter the last two digits of the current fiscal year.

   (c) Number - Enter a four digit sequential number. This number is obtained in advance from the records center or assigned by the agency records officer or other official by prior arrangement with the records center.

   (d) Volume - Enter the total volume (in cubic feet). One standard FRC box equals one cubic foot. Count boxes and insert total for each accession. Leave blank if one cubic foot boxes are not used. If odd sizes bundles are being retired, check with the records center to determine the best method of calculating cubic footage.

(e) Agency Box Numbers - Show the inclusive box numbers of each accession being transferred. Each new accession should begin with number 1 and each carton should be numbered sequentially in the upper right front corner as follows: 1 of 25, 2 of 25, 3 of 25, etc.

(f) Series Description (with inclusive dates of records) - Describe the records in sufficient detail to allow the records center to check for the proper application of the disposal authority and to facilitate reference service. Indicate whether or not the records have special status, such as "vital records." Inclusive dates of the records should be shown. The organizational component that created the records should be indicated when it is other than that shown in item 5. Special restrictions should be detailed here as noted in the following paragraph.

(g) Restriction - Enter one of the following codes to show the restriction on the use of the records:
Q- "Q" security classification.
T - Top secret.
S - Secret.
C - Confidential.
W - Restricted use/witnessed destruction required (Specify in column 6f).
R - Restricted use/witnessed destruction not required (Specify in column 6f).
N - No restrictions.

(h) Disposal Authority (Schedule and item number) - For each series of records, cite the agency records control schedule and the specific item number authorizing disposition. The NARA disposition job and item number should be cited if it has not been incorporated into an updated schedule. Paperwork will be returned to the agency if this column is not completed correctly.
(i) Disposal Date - Applying the disposition authority cited in column 6h, enter the month and year the records should be destroyed. The remainder of item 6 relates to the records center shelf location and will be completed by the records center when the transfer is approved.

(j)(k)(l)(m) - Completed by Records Center - Leave these spaces blank.

ORDS TRANSMITTAL AND RECEIPT

Complete and send or ... and two copies of this form to the appropriate Federal Records Center for approval prior to shipi ... records. See specific instructions on reverse.

OF PAGES

1. TO (Complete the address for the appropriate records center serving your area)

Federal Archives and Records Center
General Services Administration

As shown in FPMR 101-11.410-1

5. FROM (Enter the name and complete mailing address of the office retiring the records. The signed receipt of this form will be sent to this address)

Federal Labor Relations Authority
500 C Street, S.W., Room 327
Washington, D.C. 20424

2. AGENCY TRANSFER AUTHORIZATION	TRANSFERRING AGENCY OFFICIAL (Signature and title) Records Manager, Diane Brady	DATE 8-7-85
3. AGENCY CONTACT	TRANSFERRING AGENCY LIAISON OFFICIAL (Name, office and telephone No.) Howard W. Solomon Executive Director, FSIP (202) 382-0981	
4. RECORDS CENTER RECEIPT	RECORDS RECEIVED BY (Signature and title)	DATE

Fold line

6. **RECORDS DATA**

ACCESSION NUMBER RG (a)	FY (b)	NUMBER (c)	VOLUME (cu. ft.) (d)	AGENCY BOX NUMBERS (e)	SERIES DESCRIPTION (With inclusive dates of records) (f)	RESTRICTION (g)	DISPOSAL AUTHORITY (Schedule and item number) (h)	DISPOSAL DATE (i)	COMPLETED BY RECORDS CENTER LOCATION (j)	SHELF PLAN (k)	CONT. TYPE (l)	AUTO. DISP. (m)
146	85	343	6	1 thru 6	FSIP Case Files, FLRA Closed Calendar Year 1977	N	Exception NC 81-86					
				1 thru 6	77 FSIP 10-23							
				2 thru 6	77 FSIP 24-26, 28-31							
				3 thru 6	77 FSIP 31-36							
				4 thru 6	77 FSIP 37-47							
				5 thru 6	77 FSIP 48-56							
				6 thru 6	77 FSIp 57-67, 69-90							

135-106

Standard Form 135 (Rev. 6-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.4

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REDUCTION-IN-FORCE REGULATION

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REDUCTION-IN-FORCE REGULATION
(Continued)

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 3350.1A

Revised 10/03/86

SUBJECT: REDUCTION IN FORCE

SECTION 1 - GENERAL PROVISIONS

1. PURPOSE. This regulation provides a reduction-in-force system for the Federal Labor Relations Authority (FLRA).

2. SCOPE.

   a. Employees Covered. This regulation applies to all employees of the FLRA except: employees in the Senior Executive Service (SES); Presidential appointees whose appointments are required by Congress to be confirmed by, or made with the advice and consent of, the Senate; and reemployed annuitants unless not otherwise terminated by the Agency. This regulation also applies to Administrative Law Judges (ALJ's) with the modifications contained at 5 C.F.R. 930.215.

   b. Actions Covered. This regulation shall apply:

      (1) to personnel actions in which the FLRA releases a competing employee from a competitive level by:

         (a) separation;

         (b) furlough for more than 30 days;

         (c) demotion;

         (d) reassignment requiring displacement; and

      (2) When the cause of the release is:

         (a) lack of work;

         (b) shortage of funds;

         (c) insufficient personnel ceiling;

         (d) reorganization;

DISTRIBUTION:
C, M, G, F, AJ, ED, SO
AG(F), AG(A), AGF, AGFA,
OCM, OC, CC, OP

OPI:
OP

(e) the exercise of reemployment or restoration rights; or

(f) reclassification of an employee's position due to the erosion of duties when such action will take effect after the FLRA has formally announced a reduction-in-force in the employee's competitive area and when the reduction-in-force will take effect within 180 days.

Both the action to be taken and the cause of the action must meet the criteria above to be considered a reduction-in-force action under the provisions of this regulation.

3. REFERENCES.
5 U.S.C. §§ 3501 - 3504 (1982); 5 C.F.R. Part 351 (1985); Federal Personnel Manual (FPM), Chapter 351; 5 C.F.R. Part 550, Subpart G (1985); and 5 U.S.C. § 5595 (1982).

4. DEFINITIONS.

a. Annual Performance Rating of Record - means an official performance rating under a performance appraisal system approved by the Office of Personnel Management (OPM) in accordance with 5 U.S.C. Chapter 43.

b. Competitive Area - means the boundaries within which employees compete for retention under reduction-in-force procedures.

c. Competitive Level - consists of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

d. Days - mean calendar days.

e. Grades, Grade Intervals, and Equivalents - are as defined and determined in FPM Chapter 351, Subchapter 5-7.

f. Local Commuting Area - means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

g. Reorganization - means the planned elimination, addition, or redistribution of functions or duties in an organization.

h. Representative Rate - has the meaning given it in FPM Chapter 351, Subchapter 5-7.

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

j. Undue Interruption - means a degree of interruption that would prevent the completion of required work within the allowable limits of time and quality taking into account the pressures of priorities, deadlines, and other demands.

5. POLICY. The FLRA, in planning the work and organizing the work force to accomplish Agency objectives, will use attrition and other alternatives to reduction in force, where appropriate, in order to limit the number of involuntary actions that must be taken. When management determines that a reduction in force is necessary because other options are not feasible, all reduction-in-force actions shall be accomplished in accordance with the provisions of 5 U.S.C. §§ 3501 - 3504; 5 C.F.R. 351; FPM Chapter 351; this regulation; and, any other applicable laws and regulations. These provisions shall be uniformly and consistently applied in any one reduction in force.

6. RESPONSIBILITIES.

a. FLRA Management - is responsible for determining when a reduction-in-force is necessary and what positions are to be abolished.

b. The Director of Personnel - is responsible for the development, maintenance, and administration of the Agency's reduction-in-force regulation. This includes the establishment and maintenance of a list of competitive levels; the establishment and maintenance of retention registers; the determination of assignment rights; and, the provision of review procedures, as appropriate, under Section 2, paragraph 9b of this regulation, for employees wishing to review reduction-in-force records.

SECTION 2 - RETENTION FACTORS

1. COMPETITIVE AREAS.

a. General. Competitive areas are the boundaries within which employees compete for retention under reduction-in-force regulations. Competitive areas must be defined solely in terms of organizational unit(s) and geographical location(s). All employees within the area defined are included in the competitive area.

b. Minimum Competitive Area.

(1) Headquarters. The minimum competitive area at the departmental headquarters level is a major subdivision of the Agency within the local commuting area. It may be identified as an organizational segment that is separately organized and clearly distinguished from others in operation, work function, staff, and personnel administration.

(2) Field Offices. The minimum competitive area in the field is an activity under separate administration within the local commuting area and is ordinarily no smaller than an independent field installation.

c. FLRA Competitive Areas. There are fourteen (14) designated competitive areas in the FLRA.

(1) Authority - This competitive area includes all employees that work under the managerial direction of the FLRA Chairman and/or Authority Members.

(2) General Counsel (National Office) - This competitive area includes all employees that work under the managerial direction of the General Counsel with the exception of personnel assigned to the regional offices.

(3) General Counsel (Regional Offices) - Each of the nine regional and two subregional offices is designated as a separate competitive area.

(4) Federal Service Impasses Panel (FSIP) - This competitive area includes all employees assigned to FSIP.

2. COMPETITIVE LEVELS.

a. The FLRA shall establish competitive levels in accordance with 5 C.F.R. 351.403 and shall assign each position in the FLRA to a competitive level. Positions within a competitive area are in the same competitive level when they are:

(1) in the same grade (or occupational level);

(2) in the same classification series; and

(3) similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

b. In accordance with the criteria described in Section 2, paragraph 2a above, separate competitive levels are required to be established:

(1) By Service. Separate levels shall be established for positions in the competitive service and for positions in the excepted service.

(2) By Appointment Authority. Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) By Pay Schedule. Separate levels shall be established for positions under different pay schedules (e.g., GS, WG, etc.).

(4) By Work Schedule. Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis.

(5) By Supervisory or Nonsupervisory Status. Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. § 7103 (a) (10) (11).

(6) By Trainee Status. Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all the characteristics covered under 5 C.F.R. 351.702 (e), (e.g., positions under the Agency's Upward Mobility Program).

c. The Office of Personnel, EEO, and Security shall maintain a list of the competitive levels established by the FLRA and shall make the list available for review by employees and by OPM.

3. RETENTION REGISTERS.

a. When a competing employee is to be released from a competitive level, the FLRA shall establish a separate retention register for that competitive level. A retention register is a list of competing employees assigned to positions in a single competitive level. It shall include the name of each employee in Tenure Groups I, II, or III who:

(1) Is officially assigned to a position in the competitive level (including employees on paid or unpaid leave or on detail to another position);

(2) Is temporarily promoted from the competitive level; or

(3) Has received a written decision of demotion or reassignment due to unacceptable performance to a position in the competitive level.

b. The following employees are listed apart from the retention register but on the same document because they must be removed by means other than reduction-in-force before any competing employee can be released through reduction-in-force action:

(1) Each employee serving under a specifically limited temporary appointment, term promotion, a temporary promotion (together with the expiration date of the appointment or promotion); and lastly

(2) Each employee who has a written decision under 5 C.F.R. 432 of removal from the position because of unacceptable performance.

4. TENURE GROUPS.

a. Competitive Service Tenure Groups.

(1) Group I. Group I in the competitive service includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by 5 C.F.R. 315, Subpart I, is in Group I if otherwise eligible for this group.)

(2) Group II. Group II in the competitive service includes each employee serving a probationary period and each career-conditional employee. (A supervisory or managerial employee serving a probationary period required by 5 C.F.R. 315, Subpart I, is in Group II if otherwise eligible for this group.)

(3) Group III. Group III in the competitive service includes each employee serving under an indefinite appointment, each employee serving under a temporary appointment pending establishment of a register (Taper), each employee serving under a term appointment, and each employee serving under any other nonstatus, nontemporary appointment. This tenure group does not include an employee serving under a temporary appointment with a specific time limit. Such an employee is not a competing employee.

b. Excepted Service Tenure Groups.

(1) Group I. Group I in the excepted service includes each permanent employee who is not serving a trial period or whose appointment does not contain a specific time limit or any restriction or condition such as definite or indefinite.

(2) Group II. Group II in the excepted service includes each employee serving a trial period or whose tenure is equivalent to a career-conditional appointment in the competitive service.

(3) Group III. Group III in the excepted service includes each employee whose tenure is indefinite (i.e., without a specific time limitation) but not actually or potentially permanent; or whose appointment has a specific time limitation of more than one year; or who completes one year of current continuous service under a temporary appointment limited to one year.

5. VETERAN PREFERENCE SUBGROUPS. Within each tenure group, retention standing is determined by veteran preference subgroups as follows:

a. Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

b. Subgroup A includes each preference eligible employee not in Subgroup AD.

c. Subgroup B includes each employee not eligible for veteran preference. (Retired members of the military are subject to the provisions of 5 C.F.R. 351.501(d) and FPM Chapter 351, Subchapter 3-7.

6. LENGTH OF SERVICE. For reduction-in-force purposes for non-ALJ employees, the employee's service computation date, adjusted to credit performance as described below, is the employee's "service date" for determining appropriate retention standing. For ALJ's, the service date reflects the length of Federal Government service only, since ALJ's do not receive performance ratings. (Military service for retired members of the uniformed services is only creditable in an employee's service date in accordance with 5 C.F.R. 351.503(c).)

7. CREDIT FOR PERFORMANCE. This paragraph is applicable to non-ALJ employees only since ALJ's do not receive performance ratings.

a. Basis for Credit.

(1) An employee's entitlement to additional service credit for performance is based on the employee's last three annual performance ratings of record received during the three-year period prior to the date of issuance of specific reduction-in-force notices. Annual ratings are prescheduled ratings generally given once each year. Special ratings, such as for a merit promotion action, are not used. An employee will not be assigned a new rating of record for the sole purpose of affecting retention standing. In determining whether or not an appraisal was received during the three-year period described above, the date of the appraisal will be the date of the reviewing official's signature. In instances where there is no higher level of review than the first-level supervisior, the date of the appraisal will be the date of the first-line supervisor's signature. Performance

ratings that were due before the date of specific reduction-in-force notices but were not officially approved and put on record until after the date of the specific notices are not used to determine additional service credit. In order to provide adequate time to properly determine employee retention standing immediately prior to a reduction in force no new ratings of record shall be considered which are received in the Office of Personnel, EEO, and Security within 30 days before the issuance of any reduction-in-force notice.

(2) If an employee had more than three annual ratings during the three-year period, the three most recent ratings are used. An annual rating received prior to the three-year period is not used. If an employee has not received three annual ratings during the three-year period (e.g., because the employee is new to the Government), credit is given for one or more assumed ratings of fully successful in order to bring the employee's ratings up to three.

(3) When an employee's last three annual ratings as described above include one or more ratings given in other agencies, the FLRA shall use the actual rating(s) given if the employee's performance records have been forwarded to and received by the FLRA. If an employee's last three annual ratings include one or more ratings from other agencies and the employee's performance records, have not been received by the FLRA, the employee will be given the necessary number of assumed fully successful ratings to bring the total of the employee's ratings to three.

b. Amount of Credit.

(1) An employee shall be given additional service credit based on the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual or assumed) performance ratings of record as follows:

(a) Twenty additional years of service for each performance rating of exceptional;

(b) Sixteen additional years of service for each performance rating of superior; and

(c) Twelve additional years of service for each performance rating of fully successful.

No additional service credit is given for performance ratings below fully successful.

(2) When any of an employee's three previous annual ratings used other than five summary levels as required by 5 C.F.R. 430, the Director of Personnel or the Director's designee will determine equivalent rating levels between the systems, and credit the employee accordingly. If a previous appraisal was narrative only, the Director of Personnel or the Director's designee will determine whether to assign a summary rating or use an assumed rating of fully successful and ensure that this policy is uniformly and consistently applied.

c. Current Rating. An employee's current annual performance rating of record shall be the last annual rating except in the following cases:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in 5 C.F.R. 432 shall have the improved rating considered as the current annual performance appraisal of record. As with other ratings of record, the improved rating must have been given before the date of the specific reduction-in-force notices. In addition, an annual rating of unacceptable given before the opportunity period is counted as one of the employee's three previous annual ratings used to determine service credit. If, however, because of performance improvement during the notice period of a 5 C.F.R. 432 action, an employee is not demoted or separated and performance continues to be acceptable for one year after the notice, the law requires that any record of the unacceptable performance be removed from the FLRA's records. No record of the unacceptable rating would exist and, therefore, it would not be counted. (The provision contained in this paragraph applies only to an opportunity to improve performance which is unacceptable as required by 5 C.F.R. 432. This provision does not apply to an opportunity to improve performance which is minimally acceptable or better.)

(2) An employee who has been demoted or reassigned under 5 C.F.R. 432 because of unacceptable performance and who, as of the date of issuance of specific reduction-in-force notices, has not received a rating for performance in the position to which demoted or reassigned shall be considered to have a current annual performance rating of record of fully successful. However, an annual rating of unacceptable given before the demotion or reassignment is counted as one of the employee's three previous annual ratings used to determine additional service credit.

8. RETENTION STANDING.

a. The order of retention of competing employees is established:

(1) By tenure group (Group I, II, and III, in that order);

(2) Within each tenure group by veteran preference subgroup (Subgroup AD, A, and B, in that order); and

(3) Within each subgroup, by years of service which includes credit for performance as described in Section 2, paragraph 7 of this regulation (beginning with the earliest service date).

b. An employee's retention standing shall be determined as of the date the employee is released from a competitive level except that additional service credit for performance will be based on ratings received prior to the date of specific reduction-in-force notices. Any changes in factors other than performance that occur during the notice period (e.g., change from career-conditional to career tenure) must be taken into account in determining the employee's retention standing.

c. A single official date shall be established for issuance of all specific notices for each reduction-in-force in each separate competitive area. This date shall remain the same for all competing employees and shall determine their retention standing even if the FLRA must issue some individual notices after the uniform date (e.g., because the FLRA intends to take a more serious action than that first specified).

d. When an employee has a pending notice of proposed removal or demotion and the final decision on the proposal is due before the effective date of the reduction-in-force, the FLRA cannot determine the employee's retention standing until the final decision is given to the employee. If the final decision is to remove the employee from the competitive level, the employee is not a competing employee in that level.

e. The retention standing of each employee temporarily retained in a competitive level under 5 C.F.R. 351.608 shall be determined as of the date the employee would have been released from the competitive level had temporary retention action not been taken. This means that the retention standing of the employee remains fixed as of the day the employee would have been released until the FLRA completes the reduction-in-force action that resulted in the temporary retention.

f. If the FLRA discovers an error in the determination of an employee's retention standing, the error shall be corrected and any erroneous reduction-in-force actions adjusted in accordance with the employee's actual retention standing.

9. RECORDS.

a. The FLRA shall ensure that records upon which a reduction-in-force is based are accurate and current.

b. Review. The FLRA shall allow the inspection of its retention registers and related records by

(1) a representative of OPM, and

(2) an employee of the FLRA (or the employee's representative) to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

c. Retention. The FLRA shall preserve all registers and records relating to a reduction-in-force for at least one year from the date a specific reduction-in-force notice is issued.

SECTION 3 - RELEASE FROM COMPETITIVE LEVEL

1. COVERAGE. Competition to remain in a competitive level is called first round competition. Second round competition is competition for jobs in other competitive levels and is explained in Section 4 under Assignment Rights.

2. GENERAL ORDER OF RELEASE. Competing employees are selected for release from their competitive levels in the inverse order of their retention standing (Section 2 above) beginning with the employee having the lowest standing. All employees in Group III are released before any in Group II; and all employees in Group II are released before any in Group I. In each group all employees in Subgroup B are released before any in Subgroup A; and all employees in Subgroup A are released before any in Subgroup AD. In each subgroup, employees are released in the order of their service dates beginning with the most recent service date. When employees in the same subgroup are tied for release from a competitive level, the FLRA may select any tied employee for release.

3. ACTIONS.

a. When an employee's position is abolished, that employee is not necessarily selected for release from the competitive level under reduction-in-force procedures. First, noncompeting employees must be released from the competitive level. Then, the FLRA may choose to reassign employees within the competitive level. In addition, the FLRA may reassign any employee in the competitive level to

a vacant position at the same grade in the same or in a different competitive level (subject to the requirements in Section 4, paragraph 3, on filling vacancies). Reduction-in-force procedures apply only when a competing employee is released from the employee's competitive level through separation, demotion, furlough for more than 30 days, or reassignment requiring displacement when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the need to make room for an employee with reemployment or restoration rights, or reclassification as defined in Section 1, paragraph 2b, of this regulation.

b. When an employee is reached for release from a competitive level, the employee shall be offered assignment to another position in accordance with the employee's assignment rights under 5 C.F.R. 351, Subpart G; FPM Chapter 351, Subchapter 5; and Section 4 of this regulation. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer made in accordance with the employee's assignment rights, the employee shall be furlough or separated.

4. RESTRICTIONS ON ORDER OF RELEASE. The FLRA will not release a competing employee from a competitive level while retaining in that level an employee with:

a. a specifically limited temporary appointment;

b. a specifically limited temporary or term promotion;

c. a written decision under 5 C.F.R. 432 of removal or demotion from the competitive level because of unacceptable performance; or

d. lower retention standing, except under the provisions for mandatory, discretionary, or liquidation exceptions authorized by 5 C.F.R. 351.605 through 351.608 and described below or when the employee is entitled to a new notice period required under 5 C.F.R. 351.806 because the FLRA decides to take an action more severe than first specified.

5. EXCEPTIONS TO ORDER OF RELEASE.

a. Liquidation Provision. If the FLRA abolishes all positions in a competitive area within three months, the employees will be released in subgroup order. However, the FLRA may release the employees regardless of their retention standing within a subgroup, except in the case of an employee retained under a mandatory exception. The FLRA may use both continuing exceptions and temporary exceptions during a liquidation. The notice given to an employee released under this provision shall give the date the liquidation will be completed.

b. Mandatory Exceptions.

(1) Certain employees who have been reemployed after military service have special retention protections which require the FLRA to make exceptions to the regular order of release. These are Group I or II employees entitled to retention for either six months or one year after restoration under 5 C.F.R. 353. The FLRA may not separate such an employee by a reduction-in-force action during the retention period following restoration.

(2) The FLRA will record on the retention register the reasons for any change in the order of release required because of a mandatory exception.

c. Permissive Continuing Exceptions.

(1) The FLRA may make a continuing exception to the reduction-in-force general order of release to continue an employee in a position that no higher-standing employee can take over within 90 days and without undue interruption to the FLRA.

(2) The FLRA will notify, in writing, each higher-standing employee reached for release from the same competitive level of the reasons for the continuing exception.

d. Permissive Temporary Exceptions.

(1) The FLRA may make an exception for not more than 90 days to the reduction-in-force general order of release when this exception is needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level. The FLRA may use a temporary exception in order to:

(a) continue an activity without undue interruption; or

(b) satisfy a Government obligation to the retained employee; or

(c) benefit an employee when the temporary exception does not adversely affect the right of any higher-standing employee who is released ahead of the excepted employee (e.g., retaining an employee on sick leave until the sick leave is exhausted or the employee has recovered).

(2) The temporary retention of a lower-standing employee on sick leave as a temporary exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(3) A discretionary temporary exception may also be used to retain an employee if the employee's assignment will terminate within 90 days or less after the effective release date of a higher-standing employee.

(4) When the FLRA retains an employee under a permissive temporary exception for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, the FLRA will notify, in writing, each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end.

(5) When the FLRA retains a lower-standing employee, the reasons for the exception and the date the employee's retention will end will be listed opposite the employee's name on the retention register.

SECTION 4 - ASSIGNMENT RIGHTS

1. ELIGIBILITY.

a. Excepted Service. OPM regulations do not give excepted service employees any right to assignment when the FLRA cannot retain them in their competitive levels. Therefore, when an excepted service employee in the FLRA is reached for release from a competitive level, the employee may be separated or furloughed.

b. Competitive Service. Assignment rights are extended to each competitive service employee in Tenure Group I or II who has a current annual performance rating of minimally acceptable or higher. An employee either in Tenure Group III or with a current annual performance rating of unacceptable has no assignment rights.

2. OFFERS OF ASSIGNMENT.

a. General. When the FLRA releases an employee with assignment rights from the employee's competitive level, the FLRA shall offer the employee an available position in another competitive level if one exists, in accordance with the assignment provisions of 5 C.F.R. 351, FPM Chapter 351, and this regulation.

b. Available Position. An available position satisfying an assignment right is one that has all the following characteristics:

(1) It is in the competitive service;

(2) It is in the same competitive area;

(3) It will last at least three months;

(4) It is a position for which the released employee qualifies;

(5) It has a representative rate no higher than the representative rate of the position which the employee is being released; and

(6) It is occupied by an employee subject to displacement by the released employee.

c. Displacement.

(1) Lower Subgroup (Bumping). Bumping is an employee's right of assignment to a position occupied by another employee in a lower subgroup. Upon release from a competitive level, an eligible employee is entitled to bump to an available position which requires no reduction, or the least possible reduction, in representative rate when the following conditions are met:

(a) The occupied position is held by an employee in a lower tenure group or in a lower subgroup within the released employee's own tenure group; and

(b) The occupied position is the same grade or no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee is released.

(2) Same Subgroup (Retreating). Retreating is an employee's right of assignment to a position occupied by a lower-standing employee in the same subgroup. Upon release from a competitive level, an eligible employee is entitled to retreat to an available position that requires no reduction, or the least possible reduction, in representative rate when the occupied position is:

(a) Held by an employee with lower retention standing (i.e., with a later service date) in the same tenure group and subgroup;

(b) Not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee is released. (For a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent);

(c) The same position, or an essentially identical one, previously held by the released employee in a Federal agency. A position is considered essentially identical to one previously held if the two positions are enough alike that they would be in the same competitive level if they were in the same competitive area. This includes being in the same series; and

(d) Held by an employee with a current annual performance rating no higher than minimally acceptable when the released employee's rating is minimally acceptable.

d. Employee Entitlement.

The employee is entitled to the assignment right that results in the better offer. When the FLRA has more than one available position, the employee is entitled to the position with the highest representative rate. When all available positions have the same representative rate, the FLRA will choose which position to offer. The employee has no right to choose the assignment. The employee is entitled to only one proper offer and is entitled to no further offer when the employee accepts or rejects an offer or fails to reply to an offer with a reasonable time. The FLRA will specify in the reduction-in-force notice the time limit in which the employee must reply. If no available position exists or if the employee rejects or fails to reply to an offer which is in accord with the employee's rights, the FLRA may separate or furlough the employee by reduction-in-force. However, regardless of whether or not an employee has accepted or rejected a previous offer, the FLRA must make a better offer if a position with a higher representative rate (but not higher than the representative rate of the employee's current position) becomes available on or before the date of the reduction-in-force.

3. VACANCIES.

a. OPM regulations relating to reduction-in-force do not require the FLRA to fill vacant positions. The FLRA may fill all of the vacancies in a competitive area, some vacancies in a competitive area, or none. However, when the FLRA chooses to fill a vacancy by an employee who has been reached for release from a competitive level for a reduction-in-force reason, the FLRA shall follow this regulation and the provisions of 5 C.F.R. 351 and FPM Chapter 351. This means that when the FLRA has decided to fill a vacancy, an employee's right to it is determined in the same way as the right to bump or retreat is determined. In other words, when a vacancy is no more than three grades (or three grade intervals or equivalent) below the positions held by released employees, a right to the position is based on subgroup superiority as long as no employee has a retreat right to it.

b. The FLRA may satisfy an employee's assignment right by assigning the employee to a vacant position having a representative rate equal to a position to which the employee would otherwise be entitled under this Section. In addition, the FLRA may offer, in lieu of separation by reduction-in-force, a vacant other-than-full-time position to a full-time employee or a vacant full-time position to an other-than-full-time employee, within the grade limits of the employees' assignment rights. In order to preserve employee equity in the reduction-in-force process, the FLRA may not offer vacancies to employees in lieu of separation by reduction-in-force when the vacancies are below the grade limits of the employees' assignment rights and are in the same competitive area. However, assignment right grade limits do not apply when the FLRA fills vacancies from the FLRA's Reemployment Priority List.

4. QUALIFICATIONS.

a. Except as provided under Section 4, paragraph 4d, an employee is qualified for assignment to an available position or a vacancy if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement and any selective placement factors established by the FLRA;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which OPM has approved for the position;

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to the FLRA and without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee; and

(5) If assignment is to a trainee or developmental position, meets all of the conditions required for selection and entry into the program.

b. An employee who is released from a competitive level during a leave of absence because of compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided under 5 U.S.C. § 8151 and 5 C.F.R. 353.

c. If the FLRA determines that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this regulation, the FLRA must follow the notification procedures contained in 5 C.F.R. 351.702(d) and FPM Chapter 351, Subchapter 5. The FLRA may select another person for the position only after OPM makes a final determination concerning the physical ability of the employee to perform the duties of the position.

d. Waiver of Qualifications. The FLRA may assign an employee by displacement or to a vacancy by waiving the qualification requirements when:

(1) The employee meets any minimum education requirement for the position, and

(2) The FLRA determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

SECTION 5 - FURLOUGH

1. USE.

a. A furlough action is the placement of an employee in a temporary non-duty and non-pay status on a continuous basis or a discontinuous basis. Reduction-in-force procedures must be followed for furloughs of more than 30 consecutive days (or more than 22 work days if done on a discontinuous basis) when the furlough is caused by one of the reduction-in-force reasons listed in Section 1, paragraph 2(b)(2) of this regulation.

b. Furloughs of less than 30 consecutive or 22 work days are not covered by reduction-in-force procedures but are covered under 5 C.F.R. 752 procedures for adverse actions. However, the FLRA may choose to use retention standing as an objective way for determining which employees will be furloughed.

c. An employee may be furloughed under reduction-in-force procedures only if the employee has been released from a competitive level and has no assignment rights or refuses an offer of assignment.

2. TIME LIMIT. An employee may be furloughed for up to one year. The one-year period begins the day after the notice period ends and when the furlough begins.

3. RESTRICTIONS. The FLRA may not:

a. Furlough any employee it does not intend to recall to duty in the same position within one year.

b. Separate an employee through reduction-in-force while an employee with lower retention standing in the same competitive level is on furlough.

c. Fill a position, except by internal placement, when an employee on furlough is qualified and available for a position at the same or lower grade from which furloughed.

4. RECALL FROM FURLOUGH.

a. Recall to Same Competitive Level. An employee furloughed from a competitive level in which a position is to be filled must be recalled ahead of an employee in the same subgroup furloughed from another competitive level. If all employees furloughed from a competitive level cannot be recalled at the same time, employees must be recalled according to their retention standing beginning with the highest-standing employee.

b. Recall to a Different Competitive Level. Furloughed employees recalled to positions in different competitive levels are recalled according to qualifications, availability, and subgroup standing beginning with the employees in the highest subgroup.

5. SEPARATION IN LIEU OF RECALL.

a. If the FLRA subsequently determines that a furloughed employee cannot be recalled within the one-year period, the employee must be separated. If some but not all furloughed employees in a competitive level must be separated, they are selected for separation by retention standing beginning with the lowest-standing employee.

b. A new reduction-in-force notice of separation must be given to the furloughed employee at least 30 days prior to the separation and at least 30 days prior to the end of the one-year furlough period.

c. If a furloughed employee refuses or does not respond to a call to return to duty, the employee is separated by reduction-in-force effective on the specified recall date. A new reduction-in-force notice is not required.

SECTION 6 - NOTICES

1. Notice Period.

a. Each competing employee selected for release from a competitive level under this regulation is entitled to a

written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, the employee cannot be released from the employee's competitive level until at least 10 days after receipt of the specific notice.

b. The FLRA shall not issue a reduction-in-force notice more than 90 days before release except with OPM's approval or when a mandatory or temporary exception necessitates a longer notice period. (An employee who is covered by a mandatory or temporary exception must receive the notice at least 30 days before the reduction-in-force date for other employees. However, the effective date of a reduction-in-force action for an employee covered by a mandatory or temporary exception is the date the exception expires.)

c. The notice period begins the day after the employee receives the notice. The notice period does not include the date of receipt or the effective date of the reduction-in-force action. The FLRA will not count a Saturday, Sunday or legal holiday as the last day of the notice period.

2. GENERAL AND SPECIFIC NOTICES.

The FLRA shall issue general notices of reduction-in-force when it cannot specifically determine all individual actions at the start of the notice period. A general notice must be supplemented by a specific notice before the FLRA may take a reduction-in-force action. The FLRA may choose to issue only specific notices if it knows the specific reduction-in-force action to be taken and can meet the 30-day minimum notice period. The combined general and specific notice shall meet the requirements of Section 6, paragraph 1 above and Section 6, paragraph 3 below.

3. CONTENT OF NOTICES.

a. A reduction-in-force notice shall include:

(1) The specific reduction-in-force action to be taken;

(2) The effective date of the action;

(3) The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last three years;

(4) The place where the employee may inspect the regulations and records pertinent to the employee's case;

(5) The reasons for retaining a lower-standing employee in the same competitive level because of a continuing or temporary exception;

(6) Grade and pay retention information if applicable;

(7) The employee's appeal rights, including the time limit for filing the appeal and the location of the Merit Systems Protection Board (MSPB) office responsible for adjudicating the appeal; and

(8) Information on reemployment rights if applicable (including the Reemployment Priority List and the Displaced Employee Program) unless this information is provided in a supplemental notice.

b. When the FLRA issues a general notice, the general notice shall:

(1) Inform the employee that a reduction-in-force action may be necessary but that the FLRA has not yet determined the specific action to be taken;

(2) Inform the employee that the FLRA will issue a specific notice as soon as it determines what action, if any, will be taken in the employee's case;

(3) State the expiration date of the notice; and

(4) Explain that the employee should not file an appeal to MSPB before a specific reduction-in-force action has been taken.

4. EXPIRATION OF NOTICES.

a. A specific reduction-in-force notice, with any amendments, expires when it is followed by:

(1) the action specified; or

(2) an action less severe than specified.

b. A general notice expires on the date specified in the notice unless on or before the expiration date the FLRA renews the general notice or issues a specific notice. A general notice may be renewed for additional periods as long as it does not exceed the maximum notice period in Section 6-1 of this regulation.

5. NEW NOTICE. If the FLRA decides to take an action more severe than first specified, employees are entitled to receive a new written notice at least 30 days preceding the contemplated action.

6. STATUS DURING NOTICE PERIOD. When possible, the FLRA shall retain the employee in an active duty status during the notice period. However, when in an emergency the FLRA lacks work or funds for all or part of the notice period, the FLRA may place the employee:

   a. on annual leave, with or without the employee's consent;

   b. on leave without pay, with the employee's consent; or

   c. in a nonpay status, with or without the employee's consent.

   Under MSPB regulations, employees who believe they have been placed in a nonpay status in violation of controlling regulations may appeal such action.

7. EFFECTIVE DATE OF ACTIONS. A reduction-in-force action may not be taken before the date given in the specific notice. A reduction-in-force action taken after the date given in the specific notice is still valid, except when:

   a. the action is challenged by a higher-standing employee on the retention register who is reached out of order for reduction-in-force as a result of the action; or

   b. the action results in a notice period longer than the maximum.

SECTION 7 - APPEALS AND CORRECTIVE ACTION

1. An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action who believes the applicable regulations have not been correctly applied may appeal the reduction-in-force action to MSPB. (An employee who has been reassigned by a reduction-in-force action may not appeal the action). An appeal may be filed during the 20-day period beginning with the day after the effective date of the action being appealed. The appeal should be filed in the MSPB office indicated in the reduction-in-force notice. The Director of Personnel will ensure that each affected employee receives a copy of MSPB's regulation and an appeal form.

2. FLRA Corrective Action. When the FLRA decides that a reduction-in-force action was unjustified or unwarranted and restores an individual to the former or to an intermediate grade or rate of pay held, the effective date of restoration shall be the date of the improper reduction-in-force action.

SECTION 8 - REEMPLOYMENT PRIORITY LIST

1. GENERAL. The FLRA shall establish and maintain a reemployment priority list for each commuting area in which it separates Group I or II full-time and other than full-time employees from

competitive service positions under this regulation. As soon as the FLRA knows it cannot retain an employee in the employee's competitive area, the FLRA shall enter the employee's name on the appropriate reemployment priority list. The employee's name shall be entered on the list for all competitive positions in the commuting area for which the employee is qualified and available, including positions at grades higher than the employee ever held. When the FLRA fills a vacancy in a competitive position, it will give appropriate consideration to qualified, available persons on the reemployment priority list for the commuting area in which the vacancy exists. Appropriate consideration will be determined under the provisions of FPM Chapter 330.

2. EMPLOYEE ELIGIBILITY.

a. Group I Employees. The name of a Group I employee remains on the reemployment priority list for two years from the date the employee was separated.

b. GROUP II Employees. The name of a Group II employee remains on the reemployment priority list for one year from the date the employee was separated.

c. Both full-time and other-than-full-time employees are eligible for reemployment priority. However, full-time employees are considered only for full-time positions and other-than-full-time employees are considered for other-than-full-time positions.

3. DELETION OF EMPLOYEE'S NAME.

a. An employee's name is deleted from the reemployment priority list when the employee submits a written request to the FLRA asking that it be deleted.

b. A full-time employee's name is also deleted when the employee:

(1) accepts a non-temporary, full-time competitive position; or

(2) declines a full-time, non-temporary competitive position with a representative rate the same as, or higher than, the position from which the employee was separated.

c. An other-than-full-time employee's name is also deleted when the employee:

(1) accepts a non-temporary competitive position; or

(2) declines a non-temporary competitive position with a representative rate and regularly scheduled administrative work week the same as, or higher than, that of the position from which the employee was separated.

SECTION 9 - TRANSFER OF FUNCTION

1. DEFINITION. As used in OPM's reduction-in-force regulations, transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

2. BASIC PROVISIONS. The transfer of function provisions of 5 C.F.R. 351 and this regulation are applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function as defined above. The transfer of function provisions apply whether or not the transfer is authorized by a statute, reorganization plan, Executive Order, or other authority. When an employee's work transfers, the employee is entitled to transfer with it if lack of an opportunity to do so would result in the employee's demotion or separation. A transfer of function, however, does not suspend management's inherent authority to assign its work force to meet its needs. The FLRA may move employee's regardless of a transfer of function to different jobs and different duty stations where needed so long as their statutory and regulatory rights to protection against improper adverse actions are not violated. Volunteers to transfer in the place of employees identified to transfer with a function may be accepted only in accordance with FPM Chapter 351, Subchapter 10.

3. IDENTIFICATION OF EMPLOYEES FOR TRANSFER.

a. The losing competitive area identifies employees for transfer with a function through one of the following methods:

(1) Method 1. Under method 1, the employee is identified with the function that occupies the majority of the employee's time or the function that controls the grade of the employee's position regardless of the amount of time it occupies.

(2) Method 2. Method 2 is used only to identify positions to which method 1 does not apply. Under method 2, employees are identified for transfer in the inverse order of the retention standing, that is, in the same order in which they are released from the competitive level in reduction-in-force.

4. SEPARATION OF EMPLOYEES WHO REFUSE TO TRANSFER. The employees identified with a function may be required to transfer with it. An employee who refuses to transfer may be separated or placed in another position mutually agreed upon by the employee and the activity in the losing competitive area. Employees who refuse to transfer may be separated through adverse action procedures (under 5 C.F.R. 752). Such employees do not have any reemployment priority rights.

5. USE OF REDUCTION-IN-FORCE PROCEDURES.

   a. OPM's regulations do not require the losing competitive area to carry out a reduction-in-force solely for employees who decline to transfer with their functions. However, if a reduction-in-force is in progress in either the gaining or losing competitive area, reduction-in-force procedures may be appropriately utilized as described in FPM Chapter 351, Subchapter 10.

   b. In addition, if the losing competitive area identifies and transfers more employees than the gaining competitive area needs to carry on the function, the gaining competitive area may follow reduction-in-force procedures to relieve the surplus. Competing employees identified by the losing competitive area have a right to:

      (1) transfer to the gaining competitive area, without any change in tenure, before it conducts a reduction in force; and

      (2) compete among themselves and employees in the gaining competitive area for retention under this regulation.

   c. Employees whose positions are transferred solely for liquidation, and who are not identified with operating functions specifically authorized at the time of the transfer to continue in operation for more than 60 days, are not competing employees in the gaining competitive area.

6. DECISION TO TRANSFER. The FLRA will provide an employee who has been identified to transfer with a function appropriate information regarding the transfer and a reasonable amount of time to decide whether or not to transfer with the employee's position.

SECTION 10 - SEVERANCE PAY

1. BASIC ENTITLEMENT. Most employees in the FLRA are covered by the provisions for severance pay. (See 5 C.F.R. 550.701 for a complete list of employees who are covered or excluded.) OPM's regulations on severance pay (contained at 5 C.F.R. 550 and FPM Chapter 550) apply to the computation and payment of severance pay to an employee who is involuntarily separated from the

service, not by removal for cause on charges of misconduct, delinquency, or inefficiency. Employees who are thus separated must also meet the other eligibility requirements contained at 5 C.F.R. 550 for receipt of severance pay.

2. COMPUTATION OF SEVERANCE PAY.

a. Severance pay consists of:

(1) a basic severance allowance computed on the basis of one week's basic pay at the rate received immediately before separation for each year of civilian service up to and including 10 years for which severance pay has not been received under 5 U.S.C. § 5595 or any other authority and two weeks' basic pay at that rate for each year of civilian service beyond 10 years for which severance pay has not been received under 5 U.S.C. 5595 or any other authority; and

(2) an age adjustment allowance computed on the basis of 10 percent of the total basic severance allowance for each year by which the age of the recipient exceeds 40 years at the time of separation.

b. Total severance pay under 5 U.S.C. § 5595 may not exceed one year's pay at the rate received immediately before separation. This is a life time limit

c. In computing an employee's total years of creditable civilian service, the FLRA shall credit the employee with each full year and with 25 percent of a year for each three months of creditable service that exceeds one or more full years. (Creditable service must meet the criteria in 5 U.S.C. § 5595.)

d. In computing an employee's years of age over 40 for the age adjustment allowance, the FLRA shall credit the employee with 25 percent of a year for each three months that the employee's age exceeds 40.

3. PAYMENT OF SEVERANCE PAY.

a. General. After computing the employee's severance pay fund, the FLRA shall pay the employee the same basic pay at the same pay intervals as if still employed until the severance pay fund is exhausted, except that the final payment shall consist only of that portion of the severance pay fund remaining.

b. Suspension of Payments. An employee may accept one or more temporary appointments while receiving severance pay without losing severance pay. However, severance pay is suspended during the period of temporary appointments.

c. Termination of Payment. Severance pay shall be discontinued if the employee is reemployed in a nontemporary position by the Federal Government or the D.C. Government.

This regulation is effective October 3, 1986.

Jacqueline R. Bradley
Executive Director

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 3351.1

SUBJECT: REDUCTION-IN-FORCE IN THE SENIOR EXECUTIVE SERVICE

SECTION 1 - GENERAL PROVISIONS.

1. PURPOSE. This regulation provides a Reduction-in-Force system for members of the Senior Executive Service (SES) in the Federal Labor Relations Authority.

2. SCOPE. The provisions of this regulation apply to career appointees of the SES.

3. REFERENCE.

   a. Section 3595, Title 5, U.S.C.

   b. Part 752, of Title 5, Code of Federal Regulations

   c. Part 359, of Title 5, Code of Federal Regulations

   d. Section 7701 -7702, Title 5, U.S.C.

4. DEFINITIONS.

   a. Reduction in Force. For the purpose of this regulation means the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

   b. Career Appointee. An individual in an SES position who has completed or was not subject to the one year probationary requirement under Section 3393, Title 5, U.S.C.

   c. Probationary Appointee. A career member of the SES who has not completed the one year probationary period.

   d. Competitive Area. The geographical and/or organizational area in which employees compete for retention.

   e. Competitive Level. For the purpose of this regulation means all positions in a competitive area which are sufficiently alike in technical qualifications to be interchangeable.

DISTRIBUTION:
C, M, G, F, AJ, ED, ED(E), SO, AG(F), AG(A), CH, OA,
AGF-1 to 9, OAMB, OAMO, OCHA

OPI: ED

5. POLICY.

a. The agency will make a concerted effort to place employees affected by reduction-in-force by means of directed reassignment to a vacant SES position or other appropriate action.

b. SES members affected by reduction-in-force will be notified at the earliest possible date and advised of the regulations under which the reduction-in-force action is taken and of their rights and benefits.

c. All SES members shall be accorded fair and equitable treatment, consistent with governing regulations.

SECTION 2 - COMPETITIVE AREAS. There are three (3) competitive areas within the Agency.

1. Authority National Office

2. Office of General Counsel National Office and Regional Offices

3. Federal Service Impasses Panel

SECTION 3 - COMPETITIVE LEVELS. The Agency shall establish competitive levels within competitive areas consisting of all SES positions which are sufficiently similar in technical qualifications that employees can be interchanged without significant adverse impact on mission accomplishment. Attachment 1 defines the competitive levels for SES positions.

SECTION 4 - RETENTION STANDING. There will be a separate retention register for each competitive level. Employees will be placed on the retention register in accordance with their tenure group and their most recent performance appraisal.

(1) The order of groups on the retention register shall be:

a. Career Appointee - Exceptional rating

b. " " - Highly successful rating

c. " " - Successful rating

d. Probationary Appointee - Exceptional rating

e. " " - Highly successful rating

f. " " - Successful rating

g. Career Appointee - Minimally satisfactory rating

h. Probationary Appointee - Minimally satisfactory rating

i. Career Appointee-Unsatisfactory rating

j. Probationary Appointee - Unsatisfactory rating

(2) Within each group SES members are listed in descending order from the earliest service computation date.

(3) Service Computation Dates - Within each subgroup SES members are listed in descending order from the earliest service computation date.

SECTION 5 - EMPLOYEE COMPETITION. Employees are selected for release from competitive level in inverse order of their retention standing.

SECTION 6 - ASSIGNMENT RIGHTS.

1. A Career Appointee who is released from his or her competitive level through the reduction-in-force process must be offered any vacant SES position for which qualified. If there are fewer vacancies than appointees with assignment rights, the appointee with the highest retention standing shall be entitled first to any assignment to a vacant SES position. If the career appointee fails to accept a directed reassignment the appointee may be separated under adverse action procedures.

2. A Probationary Appointee who is affected by reduction-in-force is not entitled to further placement consideration for SES positions. Such employees who were appointed to the SES from a civil service position held under a career or career conditional or equivalent tenure appointment are entitled to be placed in a continuing civil service position at Grade 15 or above. Such placement may not cause the separation or reduction in grade of any other employee.

SECTION 7 - AGENCY CERTIFICATION AND REFERRAL.

1. If the FLRA is unable to place a career appointee affected by reduction-in-force in a vacant SES position for which qualified, certification of this fact shall be made to the Office of Personnel Management by the Chairman of the Authority. The Office of Personnel Management has 120 calendar days from the date of Agency certification to effect a detail or placement of the SES member in another Federal Government SES position. The affected career appointee remains on the Authority rolls during this process. The career appointee shall receive written notification of this referral and of the potential reduction-in-force.

2. If the career appointee declines a reasonable offer of placement arranged by the Office of Personnel Management, the Agency upon notification of this fact by OPM, may initiate removal action under 5 U.S.C. 3595(b)(4)(A).

3. If the career appointee has not been placed during the 120-day period, OPM will advise the Agency that it may initiate removal action. However, if the individual was an SES career appointee on May 31, 1981, the removal may be made effective no earlier than 30 days from the date of OPM's notification to the House Committee on Post Office and Civil Service and the Senate Committee on Governmental Affairs that it was unable to place the career appointee. The removal from the service of a career appointee who has not been placed during the 120-day period is effected under section 3595(b)(4)(B) of title 5, United States Code.

SECTION 8 - REINSTATEMENT ENTITLEMENT.

1. CAREER APPOINTEE.

   a. The FLRA shall notify former career appointees who were removed by reduction-in-force of each announced SES vacancy.

   b. A former career appointee who was not placed by the FLRA or the Office of Personnel Management shall be reinstated without regard to section 3393 (b) and (c) of title 5 U.S.C., to any vacant SES position for which the appointee is qualified if:

      (a) the individual was a career appointee on May 31, 1981;

      (b) the appointee was removed from the Senior Executive Service under section 3595 of title 5 U.S.C.;

      (c) before the removal action, the appointee successfully completed the probationary period prescribed under section 3393 (d) of title 5, U.S.C.; and

      (d) the appointee applies for a vacant position with the FLRA within one year from the date the Office of Personnel Management received certification that the career appointee cannot be placed in FLRA.

   c. A former career appointee who was appointed as a career member of the Senior Executive Service after May 31, 1981 may be reinstated to any SES position for which qualified if the appointee successfully completed the probationary period and was removed from the Senior Executive Service under section 3595 of title 5, U.S.C.

2. PROBATIONARY APPOINTEE. A member of the Senior Executive Service who has not successfully completed the probationary period established under section 3393(d) of title 5, U.S.C. has no reinstatement eligibility and must compete to reenter the Senior Executive Service.

SECTION 9 - APPEAL RIGHTS TO THE MERIT SYSTEMS PROTECTION BOARD

1. CAREER APPOINTEES may appeal:

   a. the competitive procedures applied in implementing the reduction-in-force;

   b. removal from the SES by reduction-in-force for failure to accept placement offer following OPM's referral.

   c. in the event of removal whether OPM took all reasonable steps to achieve placement;

   d. an Agency decision that the appointee is not qualified for the SES position to which referred by OPM;

e. determination that an appointee is not qualified for a position for which the appointee applies for reinstatement as indicated in Section 8;

f. removal from the SES for failure to accept a directed reassignment.

2. PROBATIONARY APPOINTEES may appeal the competitive procedures applied in implementing the reduction-in-force.

This revised regulation is effective January 27, 1984.

Barbara J. Mahone

BARBARA J. MAHONE
Chairman

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ATTACHMENT 1

COMPETITIVE LEVELS

Authority National Office -

A - 1 - All SES positions that are primarily managerial in nature (Executive Director and Deputy Executive Director).

A - 2 - All SES positions that require the appointee to be a member of a Bar (Chief Counsel, Assistant Chief Counsels, Solicitor).

General Counsel National Office -

G - 1 - All SES positions in the Headquarters office that require the appointee to be a member of a Bar.

G - 2 - All SES positions in the regional offices.

Federal Service Impasses Panel -

F - 1 - All SES positions that require labor relations experience.

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3630.1A

SUBJECT: LEAVE ADMINISTRATION

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02/13/86

SUBJECT: LEAVE ADMINISTRATION

SECTION 1 - GENERAL PROVISIONS

7. PURPOSE. To establish policies and procedures relative to the administration of leave within the FLRA.

8. SCOPE. This regulation applies to all Agency employees.

9. REFERENCES. U.S. Code, Title 5, Chapter 63; Federal Personnel Manual (FPM) Chapter 630, Absence and Leave; and FPM Supplement 990-2, Hours of Duty, Pay, Leave.

10. DEFINITIONS.

    a. Accrued Leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

    b. Accumulated Leave means the unused leave remaining to the credit of an employee at the beginning of a leave year.

    c. Leave Year means the period beginning with the first day of the first complete play period in a calendar year and ending with the day immediately preceding the first day of the first complete pay period in the following calendar year.

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OPI: OA

FLRA Doc. 1087 (12/80)

11. TYPES OF AUTHORIZED LEAVE OR ABSENCE. The following types of leave or excused absence may be authorized for Agency employees:

a. Annual leave

b. Sick leave

c. Leave without pay

d. Military leave

e. Maternity leave

f. Court leave

g. Excused absence

h. Adjustment in work schedules for religious observances.

SECTION 2 - RESPONSIBILITIES AND APPROVAL AUTHORITIES.

1. The Executive Director/Administrator for Authority employees; the General Counsel (or designee) for General Counsel for General Counsel national office employees and the Associate General Counsel for regional office employees; and the Executive Director, Federal Service Impasses Panel (FSIP) for FSIP employees, shall be the approving officials for approving:

   a. Approve leave without pay in excess of 30 days.

   b. Approve advance sick and annual leave in excess of five days.

   c. Approve maternity leave extending beyond 14 weeks.

2. The Director of Personnel, FLRA, will:

   a. Inform employees of policies affecting leave benefits.

   b. Furnish supervisory personnel with information and advice necessary to discharge their responsibilities for leave administration.

   c. Advice authorizing officials with respect to: (1) approval of leave without pay in excess of 30 days; (2) approval of advance sick and annual leave; and (3) approval of maternity leave in excess of 14 weeks.

3. Supervisors will approve all leave except as indicated in paragraph 1., above and assure that all absences of employees under their supervision are charged leave in accordance with applicable policies and regulations. The minimum increment for leave charge is one (1) hour. Additionally, supervisors will schedule annual leave on a year-round basis to ensure that all employees are given an opportunity for a reasonable vacation period and to use leave they would otherwise forfeit.

4. Employees will submit an Application for Leave (SF-71) for supervisory approval. While leave is normally requested in advance, there may be circumstances wherein it is not practical to request leave in advance, such as in cases of illness. A notification by the employee, by telephone to the office, does not in itself constitute approval of the leave. All leave -- regardless of the reason for which requested -- is subject to supervisory approval. Failure to obtain supervisory approval of leave may result in the absence being charged to absent-without-leave (AWOL) (see section 5, below).

SECTION 3 - ANNUAL LEAVE.

1. Full-time Employees must be on the employment rolls for a full biweekly pay period in order to earn leave for that pay period. No leave accrues for a fractional pay period upon initial employment or upon separation. Credit is given for fractional pay periods only upon transfer between Federal agencies. See paragraph 3. for accrual rates.

2. Part-time Employees who have a regularly assigned tour of duty during the administrator work week earn leave based on the number of hours in a pay status. See paragraph 3., for accrual rates.

3. ACCRUAL RATES.

a. Full-time employees:

Years of Service	Hours per Biweekly Pay Period	Per Annum Total
Up to 3	4 hours	13 days
3 to 15	6 hours	20 days

15 and over	8 hours	26 days

b. Part-time employees:

Year of Service	Accrual Rate
Up to 3	1 hour for each 20 hours in a pay status
3 to 15	1 hour for each 13 hours in a pay status
15 and over	1 hour for each 10 hours in a pay status

c. Leave Categories: Employees are placed in appropriate leave accrual categories on the basis of their creditable service as follows:

(1) Category "0" -- Employees whose appointment is for less than 90 calendar days.

(2) Category "4" -- Employees with less than three years' service.

(3) Category "6" -- Employees with 3 but less than 15 years' service. Note: An additional accrual of four hours is added in Category 6 for the last full pay period in the calendar year.

(4) Category "8" -- Employees with 15 or more years' service.

4. CREDITABLE SERVICE. Any service which is creditable in computing an annuity under the Civil Service Retirement Act may be used for setting leave accrual rates. However, military service of retired members of the Armed Forces is not creditable unless:

a. Retirement was based on "line of duty" disability; or

b. Service was performed during a war, campaign, or expedition; or

c. The individual concerned was employed in a civilian position on November 30, 1964, and has not had a subsequent break in service of more than 30 days.

5. ENTITLEMENT REQUIREMENTS. An employee whose current appointment is for 90 days or more accrues, and may use, (upon supervisory approval), annual leave accrued from the date of appointment. An employee whose current appointment is for less than 90 days does not earn annual leave unless employed for a continuos period of 90 days under the successive appointments without a break in service. The employee will be credited with all annual leave that would have been earned from the initial temporary appointment.

6. MAXIMUM ACCUMULATION, FORFEITURE, AND RESTORATION.

a. Maximum Carryover. The maximum amount of annual leave -- for both full-time and part-time employees -- that may be carried forward at the end of the leave year is 30 days (240 hours). Any excess is forfeited. The exceptions to this rule are those employees who had a balance of over 30 days leave at the beginning of the 1953 leave year may retain a higher balance as long as it is unused. Whenever a maximum accumulation in excess of 30 days is reduced, it may not be increased thereafter. Also excepted for the 30-day maximum accumulation are employees in the Senior Executive Service (SES).

b. Restoration. Annual leave forfeited pursuant to "a" above, for the following reasons will be restored:

(1) Administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960.

(2) Exigencies of the public business when the use of the forfeited annual leave was scheduled in writing, and approved, prior to the start of the third biweekly pay period prior to the end of the leave year.

(3) Sickness of the employee when use of the forfeited annual leave was scheduled in writing, and approval, before the start of the third biweekly pay period prior to the end of the leave year.

c. Procedure. An employee submits a request for restoration of forfeited annual leave. If the employee's supervisor, the necessary documentation described below will be forwarded to the Executive

Director/Administrator for Authority employees, the General Counsel (or designee) for Office of the General Counsel employees, or the Executive Director, Federal Service Impasses Panel (FSIP) for FSIP employees, for their action (approval/disapproval). The appropriate official noted above will then forward initially approved requests to the Director of Personnel for final action (approval/disapproval) in accordance with regulations issued by the Office of Personnel Management.

Required documentation includes:

(1) The calendar dates the leave was initially scheduled and approved.

(2) The date(s) during which the leave was scheduled for actual use and the amount of leave (days/hours) that was scheduled for use.

(3) Reason(s) for subsequent cancellation of approved leave including beginning and ending dates of the exigency which necessitated the cancellation.

(4) the calendar date the canceled leave was rescheduled for use.

(5) The date(s) during which the leave was rescheduled for use and the amount of leave (days/hours) that was rescheduled for use.

(6) A copy of a determination made by a designated officials in advance of the cancellation of leave:

(a) That the exigency was of such major importance as to prevent use of annual leave as scheduled to avoid forfeiture;

(b) There was no reasonable alternative to the cancellation of the scheduled leave, or the assignment of individual employees to the work requirement generated by the exigency who would thereby be forced to forfeit leave; and;

(c) That includes a positive statement of approval of restoration of forfeited leave

and the exact amount of leave approved for restoration.

d. Separate leave account for restored leave. Leave restored under these provisions will be credited to a separate leave account. This account is not to be considered part of the usual maximum carryover. This account will be carried for use within a period ending two years after:

(1) The date of restoration of annual leave forfeited because of administrative error;

(2) The date fixed by determining official as the termination date of the exigency of the public business which resulted in the forfeiture; or

(3) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited due to sickness. In instances where the exigency of public business extends to one year or more, the restored leave must be scheduled and used within a time period not to exceed two years for each consecutive year or part of a year during which the exigency existed.

7. EMERGENCY CONDITIONS. Employees may be required to take annual leave during reduced or suspended operations because of managerial reasons, or when they are prevented from working due to emergency conditions such as fire, flood, storm, power failure, or other such disasters. The absence may also be excused as provided in Section 10 of this regulation.

8. LEAVE IN CONNECTION WITH SEPARATION. An employee will be paid a lump sum for all annual leave credited to the employee's account upon separation. The lump sum will consist of: (1) the regular carryover balance from the previous leave year, if any, plus (2) annual leave accrued and unused in the then-present leave year, if any; plus (3) any unused restored annual leave maintained in a separate leave account as explained in Section 6, paragraph 6d, of this regulation.

a. Reemployment. Refund must be made and leave accredited for the unexpired portion of the period in case of reemployment in the Federal service during the period

covered by the lump sum leave payment.

b. When Separation is Imminent. Leave will not be granted when it is known, or considered likely, that an employee will not return to duty, except when: (1) the employee is being separate because of reduction in force; or (2) the employee is entering the Armed Forces; or (3) the employee has made application for disability retirement.

9. ADVANCE ANNUAL LEAVE. Supervisors may approve advance annual leave up to five days. Requests for advance annual leave beyond five days must be submitted to the appropriate official designated in Section 2-1. When an employee who has been granted advanced annual leave is separate before such leave has been earned, the employee must refund the amount paid for the period covering the leave, or it will be deducted from salary due the employee.

10. DOCUMENTATION. Periods of annual leave will be documented by the employee's submission of an application for leave (SF-71).

SECTION 4 - SICK LEAVE.

1. POLICY. The FLRA shall grant sick leave to an employee when the employee: (1) receives medical, dental, or optical examination or treatment; (2) is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement; (3) is required to give care and attention to a member of the immediate family who is afflicted with a contagious disease; or (4) would jeopardize the health of others because of exposure to a contagious disease.

2. EARNING RATE. All full-time employees, regardless of service, accrue sick leave at the rate of 4 hours per pay period (13) days annually). Part-time employees on an established tour of duty earn sick leave at the rate of one hour for each 20 hours in a pay status.

3. MAXIMUM ACCUMULATION. Unused sick leave accumulates without limit. All sick leave which is not used within the year in which it is earned may be carried forward for use/accumulation in succeeding years.

4. REQUESTS FOR APPROVAL. It is within the discretion of the supervisor to ascertain that the reasons for which the sick

leave is requested are valid. When an employee is unable to report for duty, the employee will contact the supervisor as soon as possible in order to request sick leave. Application for sick leave for optical, dental, or medical treatment or examination will be made in advance if possible.

5. PHYSICIAN'S CERTIFICATE. Sick leave in excess of three days should be supported by a physician's certification on Standard Form 71, or a form used by the physician. In cases of extended illness, medical certificates may be required by the supervisor periodically, as necessary, to establish employee's continued incapacity to return to duty. A medical certificate may be required by the supervisor for any period of absence on sick leave when there is reason to believe that an employee is abusing sick leave privileges. In these cases, the employee concerned will be advised, in writing and in advance, of this requirement.

6. FEDERAL EMPLOYEES OCCUPATIONAL HEALTH PROGRAM. Employees who avail themselves of treatment or examination under this program may be excused for absence of up to one hour. When more time is required, absence is excess of one hour will be charged to sick leave.

7. PENDING DISABILITY RETIREMENT. An employee whose application for disability retirement has been approved by the Office of Personnel Management will be granted -- prior to separation -- all sick leave to which entitled or have the sick leave credited in the computation of annuity payments.

8. SUBSTITUTION OF SICK LEAVE FOR ANNUAL LEAVE. Sick leave may be substituted for annual leave to cover the actual period of illness if an illness occurs during a period of annual leave.

9. DISPOSITION-RECREDIT OF UNUSED SICK LEAVE.

   a. Upon separation. The employee is not paid for accumulated sick leave. If the employee is reemployed within a three-year period, the total balance is recredited to the employee's account. The sick leave balance of an employee who is separated to enter the military service is recredited after restoration to a civilian civil service position.

b. In retirement. The sick leave balance of an employee retiring other than for disability, will be added to the length of service for annuity computation purposes. Sick leave thus credited is considered as having been used and cannot be transferred or recredited upon reemployment of the annuitant.

10. ADVANCE SICK LEAVE. An advance of sick leave in excess of five days is subject to the approval of the official designated in Section 2-1, of this regulation. A request must be made by the employee -- stating the reasons therefor -- and be concurred in by the supervisor. The final approved request should be submitted to the Director of Personnel, FLRA. Among the factors to be considered in approving advanced sick leave are: (1) employee's tenure; (2) established pattern of the employee's sick leave usage; (3) stability of the employee's employment record; and/or (4) whether the advance is justified by the exigency of the situation.

11. ADVANCING SICK LEAVE. An employee seriously ill or injured may request advanced sick leave up to a maximum of 30 days sick leave (see section 2, above, for delegations of authority). When an employee who has been granted advanced sick leave has been separated before such leave is earned, the employee must refund the amount paid for the period covering the leave, or it will be deducted from salary due the employee. A refund will not be adjudicated against an employee's survivor's annuity in the case of an employee's death or against an employee's disability retirement.

SECTION 5 - ABSENCE WITHOUT LEAVE. Absence without leave is an absence from duty which was not authorized or approved, or for which a leave request has been denied.

SECTION 6 - LEAVE WITHOUT PAY.

1. DEFINITION. Leave without pay (LWOP) is a temporary absence from duty in a nonpay status granted upon an employee's request. It cannot be imposed as a penalty, nor can an employee be required to take LWOP. It should not be confused with absence without leave. LWOP is approved leave and must be requested, and approved, in advance in all instances except where circumstances make a prior request impracticable. An employee cannot demand LWOP as a matter of right unless the employee is a disabled veteran entitled to such leave for medical treatment and other limited

circumstances involving military training and entry into the Armed Forces (see Federal Personnel Manual Chapters 353 and 630).

2. USE OF LEAVE WITHOUT PAY. Leave without pay for short periods may be granted in situations where leave would normally be approved. The officials designated in Section 2, Responsibilities, of this chapter, have approved authority for granting LWOP in excess of 30 days. There should be a reasonable expectation that the employee will return to work at the end of the approved period as a basic condition of approval of the extended LWOP. Examples of the types of cases for which approval may be proper are:

   a. For educational purposes when the type of course would contribute to the best interests of the FLRA.

   b. For illness or disability not of a permanent or disqualifying nature.

   c. For the purpose of protecting the employee's status during any period pending final action on a claim for disability retirement or compensation.

   d. In order to avoid a break in service, LWOP for no longer than 90 days may be granted to employees who must relocate because they are dependents of servicemen or of Federal employees who are obliged to move on administrative or rotational reassignment, or upon transfer of a function or activity. Employees granted LWOP under this provision will, prior to departure from their duty station, complete a resignation, post-dated to the end of the approved period of LWOP. The resignation will be processed if a transfer is not effected during the period of LWOP.

SECTION 7 - MILITARY LEAVE.

1. DEFINITION. Military leave is absence from duty without loss of pay or charge to annual leave to perform duty for training purposes as a member of one of the following: (1) The Army Reserve; (2) The Navy Reserve; (3) The Air Force Reserve; (4) The Marine Corps Reserve; (5) The Coast Guard Reserve; (6) The Army National Guard; and (7) The Air Force National Guard.

2. WHEN GRANTED. Employees serving permanent, temporary,

indefinite temporary pending establishment of a register, or term appointments who are members of one of the above-named organizations must be granted military leave upon presentation of official orders. Members of the National Guard of the District of Columbia will be granted military leave for all days on which they are ordered to duty for parade or encampment. Members of the other National Guard organizations or reserve components will be granted a maximum of 15 calendar days military leave in any calendar year. Absence on military leave is charged on a calendar day basis except that no charge will be made against military leave for non-work days at the beginning or end of the period of absence on military leave.

3. ACTIVE MILITARY SERVICE. An employee who is ordered into active military service pursuant to an Executive Order federalizing the employee's unit may be carried in a military leave status not to exceed 15 calendar days provided military leave has not been used during the current calendar year.

4. WHEN ORDERED BY A GOVERNOR. An employment who is a member of a National Guard unit called to duty by the Government of a State, where no action has been taken to federalize the members, is not entitled to military leave because the employee is not performing "active duty in the service of the United States." It is the policy of the FLRA to grant up to three days' excused absence in such cases. If the call lasts longer, the employee may be placed on annual leave at the employee's request.

5. INACTIVE TRAINING. Military leave may not be granted for such periods. Inactive training consists of voluntary participation in reserve activities.

6. DOCUMENTATION. Requests will be supported by a true copy of the military orders. Such orders will be submitted to the supervisor in advance of the absence and will be attached to the time and attendance report. Additionally, a certification by the appropriate military officer will be required from the employee upon return from military leave. This certification also will be attached to the time and attendance report.

SECTION 8 - ABSENCE FOR MATERNITY REASONS.

1. DEFINITION. Pregnancy is a condition which eventually

requires the employee to be absent from the job because of incapacitation. An absence covering pregnancy and confinement is to be treated like any other medically certified temporary disability. The granting of leave for maternity reasons within the Federal Government is a combination of as many as three separate kinds of leave: sick leave, annual leave, and leave without pay. Agencies must apply the same leave policies, regulations, and procedures as are applicable to requests for leave generally. Sick leave may be used to cover the time required for physical examinations and to cover the period of incapacitation. After delivery and recuperation, the employee may desire a period of adjustment or need time to make arrangements for the care of the child. These additional leave requirements may be taken care of by the use of available annual leave or leave without pay.

2. DOCUMENTATION. Accumulated and accrued sick leave will be granted when it is established by medical certificate that an employee is, or will be within a definite period, incapacitated for performance of her duties because of pregnancy and confinement. Sick leave will be granted regardless of whether she intends to return to duty. A medical certificate from the employee's physician showing the expected date of delivery and delineating the period of incapacity both before and after delivery will be accepted as the basis for determining the amount of sick leave to be granted. This period will be subject to change to accommodate changes in the employee's medical situation.

3. FAILURE TO RETURN TO DUTY. An employee who does not intend to return to duty will be separated at the expiration of any sick leave granted for maternity reasons.

4. REPLACEMENTS FOR EMPLOYEES ON MATERNITY LEAVE. Action should be initiated to obtain a replacement if any employee indicates that she will not return to duty.

SECTION 9 - COURT LEAVE.

1. DEFINITION. Court leave is a leave of absence from duty without loss of pay or charge to annual leave when an employee is summoned by a court of authority to serve as a juror or witness on behalf of the State, county, or municipality.

2. REQUESTS FOR EXEMPTION. Because of the importance of trial

by jury in the American system of justice, supervisors will not request that their employees be excused from jury duty.

3. ELIGIBILITY. An employee both permanent and temporary, either full-time or part-time, except for those employed on a when-actually-employed, or intermittent basis is eligible for court leave. In order to be granted court leave, the United States, the District of Columbia, or a State or local government must be a party. Otherwise, the employee must be charged annual leave or leave without pay.

4. JURY AND WITNESS FEES. An employee cannot accept fees for service as a juror in a court of the United States or the District of Columbia, or as a witness on behalf thereof. The employee will collect fees due, and will then return such payment to the appropriate payroll office to be credited against amounts payable to the employee by the FLRA for the period of service affected. The employee may retain fees and allowances for jury service exceeding the amount of compensation due from the Agency. Fees received for jury service on a holiday (when the employee would have been excused) may be retained by the employee. Also, fees received for witness service while in an annual leave or leave without pay status may be retained by the employee. Witness service fees and allowances for travel and subsistence -- if not paid by the FLRA -- may be retained by the employee, but these fees cannot exceed actual expenses.

5. DOCUMENTATION. An employee should present the court order, subpoena, or summons to the supervisor in advance of the absence. A copy will be attached to the time and attendance report. The employee is required to submit written evidence of attendance at court -- showing dates/hours served -- upon return of duty. Substantiating documents will accompany the time and attendance report.

6. EXCUSAL BY COURT. When an employee is excused from jury duty for one or more days, or a substantial part of a work day, the employee is expected to return to work. This provision may be waived if a hardship would result. Supervisors will make such determinations.

SECTION 10 - EXCUSED ABSENCE.

1. DEFINITION. An excused absence is an absence from duty which is administrative authorized without loss of pay and without charge to leave.

2. REGISTRATION AND VOTING. Employees who wish to vote in any election or in referendums on a civic matter in their community will be granted necessary time off. As a general rule, where polls are not open at least three hours before or after the employee's regularly scheduled hours of duty the employee will be granted an amount of excused absence to permit the employee to report to work three hours after the polls open, or leave work three hours before the polls close, wherever requires less time off. If an employee votes outside the commuting areas and an absenteeism ballot is not permitted, the employee will be permitted to make the trip to cast the ballot. Where more than one day is required to make the trip, a liberal leave policy will be observed. Time off to register will be granted on substantially the same basis as for voting except that no excused leave will be granted if registration can be accomplished on a non-work day and the place of registration is within a reasonable one-day travel distance of the employee's place of residence.

3. CIVIL DEFENSE ACTIVITIES. Participation in activities in connection with civil defense programs -- not to exceed 40 hours in a calendar year -- will be considered regular duty without charge to leave. The employee will be required to submit a written statement from Sate or local civil defense authorities (showing days/hours) upon return to duty. Such statement will accompany the time and attendance report.

4. PHYSICAL EXAMINATIONS FOR DUTY IN ARMED FORCES. Employees who report for physical examinations before induction or recall to active duty will be excused without charge to leave for the time required. In the event the absence extends beyond one working day, a statement from the examining station stating the reasons for the additional time will be submitted with the time and attendance report. Employees who are required to report for physical examinations for retention in the reserves may not be excused but may be granted sick leave.

5. FUNERALS. A veteran may be excused up to four hours in any one day to participate in a military funeral service as a pallbearer, member of a firing squad, or an honor guard. An employee may be granted excused leave not to exceed three work days to arrange for and/or attend the funeral or memorial service for an immediate relative who died as a result of a wound, disease, or injury incurred while serving

as a member of the Armed Forces in a combat zone.

6. BLOOD DONATIONS. An employee may be granted up to four hours in any one day to give blood to the American Red Cross or similar organization; to any Agency employee who needs a blood transfusion; or to replace blood required by an agency employee. The leave must be taken on the day that blood is donated and is in addition to the time required to travel to and from the local blood center.

7. MEDICAL TREATMENT OR EXAMINATION. An employee injured in the performance of duty will not be charged leave for the remainder of the day for necessary physical examination or treatment. The Federal Employee's Compensation Act provides that an employee who is disabled as a result of a work injury may use annual or sick leave or be placed on leave without pay and receive compensation for the lost pay if otherwise eligible. Compensation for pay lost due to work injuries begins on the first day of nonpay status if the employee loses pay for more than 21 days; if the employee loses pay for 21 days or less, compensation begins on the fourth day of nonpay status.

8. ABSENCES DUE TO EMERGENCY CONDITIONS.

   a. When employees are unable to report for work, report late, or are dismissed early because of unusual weather conditions, floods, "Acts of God," or the breakdown or disruption of transportation facilities, the absence may be excused or charged to leave. Within the Washington, D.C., metropolitan area, the dismissal of employees or closing of offices (without charge to leave) due to severe snow, icing conditions or other hazardous weather, will be effected as follows:

      (1) During the work day, the final decision to dismiss Federal employees early will be made by the Director of the Office of Personnel Management, in conjunction with the Assistant to the President for Cabinet Affairs. Notification of such decision will be made by the Office of Personnel Management to the Director of Personnel. The Director of Personnel will notify all FLRA Washington offices, as well as employees of the Federal Service Impasses Panel.

      (2) During non-duty hours, a decision by the Director

of the Office of Personnel Management, in conjunction with the Assistant to the President for Cabinet Affairs, that employees not report for work due to the above conditions will usually be announced by means of local news media.

(3) No FLRA organization in the Washington area is authorized to dismiss employees early or close offices due to weather conditions independent of the determination made by the designated officials noted in section 8-a(1).

b. Outside of the Washington, D.C., metropolitan area, the decision as to whether employees will be excused will be made by the appropriate Regional Director, after consultation with the National Office of the General Counsel. However, the decision to close a regional or field office will take into consideration the action which is taken by other Federal agencies in the geographic area.

c. If employees are dismissed during the work day due to emergency conditions, only those employees who were actually in a duty status at the time of the early dismissal shall be excused without charge to leave for the remainder of that day. All employees in a duty status or in a leave status shall be excused without charge to leave for dismissals of full days. Full days so excused will be considered non-work days under 19 Comp. Gen. 955, 957 and no leave will be charged for absence of any employee.

9. BRIEF ABSENCES.

a. Brief absence of less than one hour may be excused when the reasons are justifiable to the supervisor.

b. Where reasons are not acceptable to the supervisor, absence may be charged to absence without leave (AWOL).

c. If the absence is excused or charged to other than AWOL, the absence may not be the basis for disciplinary action.

10. ADJUSTMENT OF WORK SCHEDULES FOR RELIGIOUS OBSERVANCES.

Employees may elect to work compensatory overtime for the

purpose of taking time off without charge to leave when personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek. Employees who elect to work compensatory overtime for this purpose shall be granted (in lieu of overtime pay) an equal amount of compensatory time off (hour for hour) from the employee's scheduled tour of duty. This may be disapproved by the agency if such modifications in work schedules interfere with the efficient accomplishment of the agency's mission.

11. TEST AND INTERVIEWS. Employees will not be required to use leave for the purpose of tests and interviews when such tests or interviews are required for employment within FLRA.

12. CONFERENCES AND SEMINARS. Employees may be excused without charge to leave for attending professional meetings dealing with subject matter related to the functions of FLRA (including the Federal Service Impasses Panel) or where the employee is an official representative of the Agency.

This regulation is effective February 13, 1986.

_____
Jacqueline R. Bradley
Executive Director/Administrator

FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION

FLRA No. 1540

PERMANENT CHANGE OF STATION (PCS) TRAVEL AND ALLOWANCES

Issue Date: March 10, 2004

Contents

0101. PURPOSE & APPLICABILITY.

101.1 General.
The FLRA receives authority to pay travel expenses from various laws and regulations. See, e.g., 5 U.S.C. §§ 5721-5734; 41 CFR 300-304. Chapter 302 of the Federal Travel Regulations (FTR) addresses relocation expenses for which the federal government can pay directly or reimburse Federal civilian employees and certain new appointees. 41 CFR 302.

101.2 Purpose.
This policy instruction provides agency policy and guidance on permanent change of station (PCS) travel and allowances.

101.3 Applicability.
This policy instruction applies to new appointees, transferred employees, and FLRA employees, unless otherwise exempted.

101.4 Cancellation.
This policy instruction cancels and supersedes any prior or current FLRA policies dealing with this topic.

0102. APPROVAL AUTHORITY / DELEGATION(S).

Except as otherwise expressly provided by law, authorization of relocation travel and approval of associated expenses reside solely within the authority of the FLRA Chairman, unless the Chairman expressly delegates, in writing, such authorities.

0103. DEFINITIONS.

103.1 Break in Service means a separation from Federal service of four (4) calendar days or more.

103.2 Days means calendar days.

103.3 Federal Travel Regulations (FTR) means the sections of Title 41, Code of Federal Regulations (CFR), which implements statutory requirements and Executive Branch policies for Federal civilian employee travel and others authorized to travel at the Government's expense.

103.4 New Appointee means any person newly appointed for permanent duty to Government service, including former temporary employees being converted to permanent duty, student trainees who are assigned upon completion of college work, and individuals appointed after a break in service.

103.5 Permanent Change of Station (PCS) means the assignment or transfer of an employee to a new/different permanent duty station. The PCS should be in the best interest of the Government and not primarily for the convenience or benefit of the employee at the employee's request.

103.6 Transfer means a move of a permanent Federal employee without a break in service from one official station to another for permanent duty.

0104. POLICY.

For PCS determinations, the FLRA policy is that the FLRA Chairman (or the Chairman's designee) shall make such determinations on a case-by-case basis and that it is the FLRA Chairman's (or the Chairman's designee) responsibility to make decisions that balance an employee's rights and the prudent use of appropriated funds. For instance, the FLRA Chairman (or the Chairman's designee) may determine that well-qualified candidates exist within a particular geographical area and therefore restrict the recruitment area in a particular vacancy/recruitment announcement and or indicate within the vacancy/recruitment announcement that PCS allowances are not authorized for that recruitment action.[1]

To receive authorization for PCS benefits, the recipient/employee shall sign a one (1) year service agreement with the FLRA, prior to receipt of benefits (see page 8 of this policy instruction). In addition, employees who have previously received PCS benefits from the FLRA must be in an FLRA geographic location for at least one (1) year before the FLRA will pay for a subsequent move.

0105. PCS MOVES FOR WHICH PAYMENT WILL BE MADE.

105.1 Vacancy/Recruitment Announcements.
Normally, when FLRA issues a vacancy/recruitment announcement under its merit promotion program, such action is considered a recruitment action with the transfer presumed in the best interest of the Government in instances involving a promotion, unless the vacancy/recruitment announcement expressly provides that PCS allowances are not authorized. The FLRA retains discretion in cases of lateral transfers or changes to lower grades.[2]

105.2 FLRA-initiated Noncompetitive Transfers.
If the FLRA takes the initiative to request an employee transfer to a different location, the transfer will be considered in the interest of the Government and PCS costs will be paid. Managers or selecting officials seeking an FLRA-initiated request must fully justify the request in writing. The FLRA Chairman determines whether the request is in the interest of the Government and is not primarily for the personal convenience or benefit of the employee or generated at the employee's request.

FLRA-initiated transfers may include, but not necessarily be limited to the following instances:

- Transfers that result from a reorganization (or a dramatic change in

[1] See *In the Matter of Earl G. Gongloff*, GSBCA, 13860-RELO (Feb. 7, 1997).
[2] See, e.g., *In the Matter of Paul C. Martin*, GSBCA, 13722-RELO (Dec. 11, 1996).

workload) requiring placement of excess human capital or transfer of positions to another office location outside the commuting area;
- Transfers to fill positions in critical shortage categories in which previous attempts to fill were unsuccessful.

105.3 Student Trainees.
Upon conversion to a permanent position, the FTR allows only the following benefits be paid: (1) transportation for appointee and family; (2) travel, including per diem, for appointee only; (3) mileage if privately owned conveyance is used; (4) shipment of household goods NTE 18,000 pounds, and temporary storage; and (5) shipment of mobile home in lieu of transportation and temporary storage of household goods.

Specifically excluded are: (1) residence sale and purchase transactions; (2) temporary quarters and subsistence expenses; (3) house hunting; (4) relocation services contracts; (5) per diem for family; (6) miscellaneous expense allowance; (7) lease breaking; and (8) non-temporary storage of household goods.

106. MOVES FOR WHICH PAYMENT WILL NOT BE MADE (Except as Noted).

106.1 Applicants Recruited through OPM or OPM-Prescribed Hiring Authorization.
If a candidate is recruited and selected through OPM action(s) (i.e., direct hire, applicant supply file, certified rosters or delegated examining) and does not have current Federal status, a household move will not be paid nor will any relocation cost reimbursement(s) be awarded. Applicants included in this category would be new, first time hires from the private sector, candidates with reinstatement authority, VRA candidates, former Peace Corps Volunteers, predetermined score eligibles, etc. The FLRA Chairman may grant an exception in the case of an applicant possessing unique knowledge, skills, or abilities that can be directly and solely tied to the success of a key project, program, or mission or the FLRA, or if the position to be filled is determined by OPM to be in a difficult to fill shortage category and the FLRA does not receive an adequate number of well-qualified candidates within the local area of consideration.

PCS funds will not be made for permanent change of station required by promotion, a lateral move, or change to a lower grade if the vacancy/recruitment announcement plainly states to applicants that PCS funds are not authorized under the announcement.

106.2 Employees Moving Within One (1) Year.
An employee must be in an FLRA geographic location for at least one (1) year before the FLRA will pay for a subsequent move. Exceptions are granted only by the FLRA Chairman. The request for an exception should clearly show significant benefits to the Government that outweigh the employee's personal gain.

106.3 Lateral Transfers.

The Comptroller General has ruled that lateral transfers *not* under Merit Promotion, hardship moves, and moves at the employee's request, are seldom in the interest of the Government, but are primarily for the convenience or benefit of the employee. In such cases, PCS payment costs are not authorized. Examples of two situations where the Comptroller General denied move costs involved: (1) transfers for reasons related to the health of a spouse or family member; and (2) job swaps, or transfers because of an employee's desire to live in a specific location or climate.

Exceptions to this policy will be reviewed individually by the FLRA Chairman. A complete description of circumstances and justification must be developed by the selecting official or authorized representative and forwarded to the FLRA Chairman. No commitments shall be made concerning such transfers and associated change of station costs unless and until the FLRA Chairman grants an approval.

0107. CRITERIA.

107.1 New Appointees.

New appointees whose place of actual residence at the time of selection for appointment is not located in the same or metropolitan area as the first duty station will be authorized transportation expenses as provided by the FTR only when the FLRA Chairman makes a determination that the relocation is incident to the appointment and is in the best interest of the Government. To the extent allowable, this determination should be made using the principles prescribed for transferred employees.

107.2 Transferred Employees.

An employee may not be reimbursed for relocation expenses if s/he relocate(s) to a new official station that is less that 50 miles from the old official station, unless the FLRA Chairman (or Chairman's designee) authorizes an exception, in writing. On a case-by-case basis and having considered the following criteria, the FLRA Chairman (or Chairman's designee) may authorize the reimbursement of relocation expenses of less than 50 miles when the FLRA Chairman (or Chairman's designee) determines that it is in the interest of the Government, and: (1) the one-way commuting pattern between the old and new official station increases by at least 10 miles, but no more than 50 miles; or (b) there is an increase in the commuting time to the new official station; or (c) a financial hardship is imposed due to increased commuting costs. Therefore, although relocation expenses will not normally be paid where the new duty station is less than 50 miles from the old duty station, the FLRA Chairman (or Chairman's designee) may make exceptions where the employee's commuting distance increases by more than 10 miles.

107.3 Budget Constraints.

Budget constraints alone do not justify the denial of PCS expenses. Any decision to pay or not to pay PCS expenses must be made prior to announcing the position,

must appear on the vacancy/recruitment announcement, and must be documented in the official merit promotion case file. Additionally, the selectee will be advised in writing of the decision to pay or not to pay PCS expenses, as part of the formal selection notification process.

0108. RESPONSIBILITIES.

108.1 General Services Administration (GSA).
The GSA Administrator issues the FTR under the applicable authorities reflected at the beginning of each part of the regulation. The FTR governs travel and transportation allowances for Federal civilian employees (chapter 301); relocation allowances for Federal civilian employees and certain new appointees (chapter 302); payment of expenses connected with the death of Government civilians under certain circumstances (chapter 303); and payment from a non-Federal source for travel expenses (chapter 304). Chapter 300 includes a general introduction to the FTR and agency reporting requirements.

108.2 FLRA Chairman.
The FLRA Chairman retains authorization and approval authority over all aspects of this relocation policy. The Chairman may, in writing, expressly delegate specific authorities under this policy instruction to other agency management officials, as appropriate. In such an instance, further re-delegation is prohibited absent express, written direction of the FLRA Chairman.

108.3 Director, Policy & Performance Management.
The Director of Policy & Performance Management shall establish and distribute agency-wide policy instructions for the FLRA and shall update such policy instructions, from time to time, as appropriate.

108.4 Office of the Executive Director.
The Executive Director is responsible for agency-wide implementation of this policy instruction, including training and management controls.

108.5 Director, Human Resources.
The director of human resources is responsible for ensuring that all vacancy announcements contain language, as approved by the Chairman, regarding payment of PCS expenses. In view of the requirements to pay moving expenses to employees selected under vacancy/recruitment announcements, the Director of Human Resources shall be responsible for ensuring that special attention is paid to filling such positions from the local area of consideration. This is particularly important when announcing to fill positions at the lower grades (i.e., GS-5/7/9) where local recruitment is likely to provide an adequate number of well-qualified candidates. Additionally, the Director of Human Resources is responsible for ensuring that no promises are made nor any personnel action is effected based upon payment of PCS costs, without first receiving express prior approval to do so. The Director of Human Resources shall coordinate with the Director of Budget & Finance for identifying and initiating, in writing, issues concerning the

availability of discretionary payments in particular cases for the Chairman's consideration.

108.6 Director, Budget & Finance.

The Director of Budget & Finance is the designated program manager for the travel program. As such, the director is responsible for managing the FLRA relocation allowance program in compliance with this policy instruction, including, but not limited to overseeing the work of the Travel Program Coordinator; and advising the director of policy & performance management of changes in law, rule, or regulations related to the government-wide travel program; including all areas that are not deemed employee entitlements. The Director of Budget & Finance shall also coordinate with the Director of Human Resources to identify and initiate, in writing, issues concerning the availability of discretionary payments in particular cases for the FLRA Chairman's consideration. For all travel and transportation expenses of a transferred employee, the Director, Budget & Finance, should record the obligation against the appropriation current when the employee is issued travel orders. [3]

108.7 Selecting Official(s).

Selecting officials shall not make any promise of PCS payment to applicants or FLRA employees without the prior approval of the FLRA Chairman (or the Chairman's designee).

108.8 New Appointees/Transferees.

New appointees or FLRA employee transferees shall sign a service agreement of not less than one (1) year prior to receipt of PCS benefits/payment. Upon approval of PCS benefits, new appointees or FLRA employee transferees shall be eligible for all FTR entitlements. Those benefits, including extension of time, which the FTR characterizes as non-entitlements, shall be decided on a case-by-case basis and require the prior approval of the FLRA Chairman. New appointees/transferees must obtain written approval for travel and PCS relocation allowances before the travel or move may begin. Employees are required to document expenses as required under the FTR.

108.9 Travel Program Coordinator.

The travel program coordinator is responsible for managing the day-to-day operations of the FLRA Travel Program. Recognizing that the FTR provides certain entitlements and certain discretion as to payment of various expenses, for each case presented, the travel program coordinator is responsible for presenting all options in which the FTR presents an agency flexibility or discretion for payment to the FLRA Chairman, through the Director of Budget & Finance, prior to the Chairman's approval or disapproval of such payments.

[3] 64 Comp. Gen. 45 (B-213,530, Nov. 2, 1984).

0109. PCS ENTITLEMENTS.

Entitlements differ for new appointees and transferees. The number of temporary storage, house-hunting, and temporary quarters days are determined by justification/documentation as outlined in the FTR and are at the FLRA's discretion. Upon the FLRA Chairman's approval of PCS relocation payment, the FTR should be the first source for information on relocation entitlements. Where the FTR offers discretion in whether to pay an expense or to offer a benefit, how much, or for how long, the FLRA Chairman, the directors of human resources and budget & finance respectively shall notify, the FLRA Chairman in writing. The FLRA Chairman (or the Chairman's designee) will consider and approve payment of such expenses, as appropriate, on a case-by-case basis.

0110. PCS SERVICE AGREEMENT.

To receive authorization for PCS benefits, all employees are required to sign a one (1) year service agreement, illustrated on page 8 of this policy instruction. The employee may also be required to sign a relocation restrictions agreement, as appropriate, clarifying such matters as Temporary Quarters Subsistence Expenses (TQSE) amount(s); days deducted from TQSE for house-hunting trip(s); use of relocation service companies, etc.

FEDERAL LABOR RELATIONS AUTHORITY
SERVICE AGREEMENT

I, _____, in consideration of payment of my travel, the expense of my household goods and personal effects, and the transportation of my immediate family (when applicable) from _____ to _____, do hereby agree to remain I the Federal Government service for a period of at least one (1) year from the effective date of my entry on duty on _____, unless separated for reasons beyond my control that are acceptable to the Federal Labor Relations Authority (FLRA).

Further, I, the undersigned, do hereby agree that if I fail to fulfill the terms of this employment agreement by retiring, resigning, or otherwise vacating the position without prior FLRA authorization, or if I am removed for cause before the expiration of the period of the agreement, I will, upon demand, repay the FLRA for my transportation and per diem allowance and transportation of dependents and cost of shipment of household goods and effects from _____ to _____, and I authorize the FLRA to withhold any final payment due me to apply against or liquidate any indebtedness arriving from a violation of this employment agreement.

_____ _____
Employee signature Date

_____ _____
Notary signature Date

0111. EFFECTIVE DATE.

The policies addressed in this instruction are effective immediately and replace any prior or conflicting FLRA policies dealing with this topic.

Jill M. Crumpacker /s/ March 10, 2004

Jill M. Crumpacker
Director,
Policy & Performance Management

Date

Submitted for posting on the FLRA Intra-Net: March 10, 2004

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 1600.1A

Revised 8/8/84

SUBJECT: SECURITY PROGRAM

1. PURPOSE. The purpose of this regulation is to establish procedures in order to insure that the Federal Labor Relations Authority hires and retains only persons whose employment is found to be clearly consistent with the interests of the national security.

2. SCOPE. This regulation applies to all employees of the Federal Labor Relations Authority (FLRA), except those employees whose appointment is for a period of 90 days or less.

3. REFERENCE.

   a. Executive Order 10450

   b. FPM - 731 - Suitability

   c. FPM - 732 - Personnel Security Program

   d. FPM - 736 - Investigations

   e. FPM Supplement 296-33 - The Guide to Processing Personnel Actions

   f. 5 U.S.C. 7532

   g. 5 U.S.C. 3571

   h. 5 U.S.C. 5596

4. DEFINITIONS.

   a. DISTINCTION BETWEEN SECURITY AND SUITABILITY. Suitability determinations are required to be made with respect to applicants and employees in all positions with the Federal Government. Suitability refers to requirements for employment having to do with character, reputation, and fitness of the employee or person under consideration. Security determinations, on the other hand, are based on interests of national security. They are governed by the standards established in E.O. 10450 and apply only with respect to applicants or employees in sensitive positions witnin the Federal Government. The standards and criteria for evaluating

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AG(F), AG(A), AGF, AGFA, OCM, OC, CC, OP

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individuals for sensitive positions and making security determinations include all those used for evaluating general suitability for employment. However, due to considerations of national security, the standards and criteria used in reaching security determinations are more stringent than those used in determining suitability. Security determinations may be relied on to resolve issues of suitability. However, if an employee is removed based upon a suitability determination, adverse action procedures must be used rather than security procedures regarding removals. An employee in a nonsentitive position may never be removed in the interest of national security, using the provision of E.O. 10450; however the employee may be removed on the issue of suitability.

b. National Security. Information that has been determined pursuant to E.O. 10450 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

c. Sensitive Position. A sensitive position is any position in FLRA the occupant of which could bring about, by virtue of the nature of the position, a materially adverse effect on the national security.

5. SECURITY CATEGORIES OF POSITIONS WITHIN THE FLRA.

a. Sensitive positions within FLRA are divided into the following categories as defined by the Office of Personnel Management, and may be reclassified at the discretion of the Director of Security or designee:

(1) Critical-Sensitive Positions:

Critical-sentitive positions entailing duties that encompass one or more of the following:

a. Access to TOP SECRET defense information.

b. Development or approval of war plans, or particulars of war, or critical and extremely important items of war.

c. Development of approval of plans, policies, or program that affect the overall operations of the agency, i.e., policy-determining positions.

d. Investigative duties, the issuance of personnel security clearances, or duty on a personnel security board.

e. Fiduciary, public contact, or other duties demanding the highest degree of public trust.

(1) The following positions are designated as Critical-Sensitive Positions:

Chairman
Authority Members
General Counsel
Executive Assistant to Member
Executive Director/Administrator
Executive Director of FSIP
Deputy Executive Director of FSIP
Chairman FSIP
Panel Members
Foreign Service Labor Relations Board Members
Foreign Service Impasses Disputes Panel Members
Solicitor
Deputy Solicitor
Director, Case Management
Chief Counsel
Security Officer
Deputy Security Officer
Director of Personnel
Comptroller
Associate General Counsel
Executive Assistant to the General Counsel
Special Assistant to the General Counsel
Assistant General Counsel
Regional Director

(2) Noncritical-Sensitive Positions:

Noncritical-Sensitive positions are sensitive positions that do not meet the criteria in Subparagraphs a through e above but contain duties that encompass one or more of the following:

a. Access to SECRET or CONFIDENTIAL defense information.

b. Duties that may directly or indirectly adversely affect the national security.

c. Duties that demand a high degree of confidence and trust.

(1) The following positions are designated as Non-Critical Sensitive Positions:

Staff Assistant
Secretary to Executive Director/
Administrator, Authority

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Secretary to the Executive Director of FSIP
Director of EEO
Congressional Affairs and Public Information Officer
Administrative Law Judge
Associate Solicitor
Secretary to the Solicitor
Regional Attorney
Attorney Advisor
General Attorney (Labor)
Labor Relations Specialist
Special Assistant to Chief Counsel
Assistant Chief Counsel
Supervisory Attorney-Advisor
Supervisory Labor Relations Specialist
Accounting Officer
Chief, Administrative Services
Budget Analyst
Contract Specialist
Associate Director of Personnel for Operating Personnel Services
Associate Director of Personnel for EEO & Affirmative Employment Programs
Associate Director of Personnel for Policy Analysis and Development
Personnel Management Specialist
Personnel Assistant
Computer Specialist
Deputy Assistant General Counsel
Deputy to the Assistant General Counsel
Financial & Program Analysis Officer
Management Analyst
Secretary to Associate General Counsel
Law Clerk Trainee

(3) Nonsensitive Positions:

Nonsensitive positions are positions that do not meet the criteria in 1 or 2 above.

6. DESIGNATION OF CRITICAL-SENSITIVE, NONCRITICAL-SENSITIVE AND NONSENSITIVE POSITIONS.

All FLRA positions will be reviewed by the Director of Security or Deputy Director of Security (identified in Paragraph 11, below) who will determine in conjunction with the Executive Director/ Administrator of the Authority, Associate General Counsel or the Executive Director of the FSIP, as appropriate, whether they are

sensitive in nature. Those that are found to be sensitive will be designated either as Critical-Sensitive or Noncritical-Sensitive, based on the provisions of Para. 4 above.

a. The Optional Form 8 for each position description will be marked by the Office of Personnel, EEO & Security with the designation accorded.

b. Each individual occupying a sensitive position will be notified of the designation. Information concerning specific positions designated as Critical-Sensitive or Noncritical-Sensitive will be released to other officials only on a need-to-know basis.

7. SECURITY STANDARDS.

No person shall be employed or retained as an employee in a sensitive position unless such employment is clearly consistent with the interest of the national security; or at the discretion of the Director of Security or Deputy Director of Security or designee.

a. Information developed on an applicant for employment, or an employee in a sensitive position in FLRA, as to whether employment of the applicant or employee is clearly consistent with the interests of national security shall relate, but shall not be limited to, the following:

(1) Any behavior, activities, or associations that tend to show that the individual is not reliable or trustworthy.

(2) Any deliberate misrepresentations, falsifications, or omissions of material facts, with an intent to defraud the Government.

(3) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; habitual use of intoxicants to excess; drug addiction; or sexual perversion.

(4) Any illness, including any mental condition, of a nature that, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(5) Any facts that furnish reason to believe that the individual may be subjected to coercion, influence, or pressure that may cause the person to act contrary to the best interests of the national security.

(6) Commission of any act of sabotage, espionage, treason, or sedition, or attempts threat or preparation therefor, or conspiring with, or aiding or abetting, another to commit any such act.

(7) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agency or representative of a foreign nation whose interest may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to otherthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(8) Advocacy of use of force or violence to overthrow the Government of the United States, or the alteration of the form of government of the United States by unconstitutional means, upon review by the Security Officer or designee.

(9) Knowing membership in an organization with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) that unlawfully advocates or practices the commission of acts of force to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the government of the United States or any State or subdivision thereof by unlawful means.

(10) Intentional, unauthorized disclosure to any person of security information, or of other information discloure which is prohibited by law, or willful violation or disregard for the provisions of this regulation.

(11) Performing or attempting to perform assigned duties or otherwise acting so as to serve the interests of another government in preference to the interests of the United States.

(12) Refusal by the individual to testify before a Congressional committee regarding charges of the individual's disloyalty or other misconduct.

8. INVESTIGATIONS.

Every appointment in the FLRA shall be subject to investigation. The scope of the investigation shall be determined by the relationship of the position to the national security, as determined by the Director of Security, Deputy Director of Security or designee.

9. SENSITIVE POSITIONS.

In conformance with Executive Order 10450, preappointment full field investigations shall be conducted on all persons appointed to Critical-Sensitive positions. These investigations, depending upon their scopes, will be used not only to satisfy the requirement of the security program but also to provide background information on the qualifications and suitability of persons being considered for a position in FLRA. For Noncritical-Sensitive positions, a National Agency Check with written inquiries shall be conducted. The investigations shall be conducted on a preappointment basis if at all possible.

a. The Office of Personnel Management will conduct all investigations for the Federal Labor Relations Authority.

b. A person occupying a position that is redesignated as Critical-Sensitive may continue to occupy the position pending the completion of a full filed investigation, subject to the other provisions of the regulation.

c. A Critical-Sensitive position may be filled for a limited period of time by a person wich respect to whom a full field investigation has not been completed, if the Executive Director/Administrator of the Authority, Associate General Counsel, or the Executive Director of FSIP, as appropriate, find that this action is necessary in the national interest. Such a written finding shall be made a part of the personnel record of the person concerned, and the full field investigation will be initiated within three work days.

d. A non-critical sensitive position may be filled for a limited period of time by a person with respect to whom a national agency check and inquiries (NACI) has not been completed if the Executive Director/Administrator of the Authority, Associate General Counsel or the Executive Director of the FSIP, as appropriate finds that this action is necessary in the national interest, with concurrence of the Director of Security or designee. Otherwise the investigation will be conducted on a preappointment basis if at all possible.

10. NONSENSITIVE POSITIONS.

The national security is not involved in the case of nonsensitive positions; hence a security investigation is not conducted. The scope of investigation of applicants for such positions shall be such as to determine their suitability for employment. However, in no event shall the suitability investigation include, on a preappointment or postappointment basis, less than a National Agency Check (including a

check of the fingerprint files of law enforcement agencies, former employers and supervisors, references, and schools attended by the person being investigated. Such investigations shall be initiated within three work days after appointment. The suitability standards and guidelines for nonsensitive positions are located in Federal Personnel Manual Supplement 731-1.

11. DIRECTOR OF SECURITY AND DEPUTY DIRECTOR OF SECURITY.

The Executive Director/Administrator shall act as Director of Security and the Director of Personnel shall act as Deputy Director of Security. The Director of Security shall appoint a Security Officer and Deputy Security Officer to assist in the conduct of the security program.

12. EVALUATION.

The Director of Security, Deputy Director of Security or designee shall evaluate full field investigation reports and other information received from the Office of Personnel Management, the FBI, and other sources and shall determine whether the employment of an employee or applicant in a sensitive position is clearly consistent with the interests of national security. In the absence of derogatory information of a security nature, the Security Officer or designee shall find that employment in a sensitive position is clearly consistent with the interests of national security and shall make a favorable determination. The Director of Security, Deputy Director of Security or designee upon receipt of clearance information can make only positive and clear determinations. If there is derogatory information of a security nature, the Director of Security or designee in conjunction with the suspending officer (identified in Par. 16) will render the decision to suspend without pay, or reassign or detail an employee to a non-sensitive position. In those cases where such a decision has been made the two shall jointly recommend disposition of the case to the Chairman or the General Counsel who will render a final decision.

13. CLEARANCES.

The Director of Security, Deputy Director of Security or designee shall designate the level of security clearance to be granted by the FLRA based upon the following criteria:

a. Employee occupies a sensitive position.

b. A full field investigation which has resulted in a "favorable" determination.

c. The designation of the level of clearance shall be set forth on a notification form. Copies shall be furnished to the employee's supervisor, the central security file, and the employee's Official Personnel Folder.

14. REEVALUATION OF EMPLOYEES IN CRITICAL-SENSITIVE POSITIONS.

The incumbent of each Critical-Sensitive position within the FLRA shall, five years after appointment and at least once each succeeding five years, submit an updated personnel security questionnaire to the Director of Security. The Director of Security, Deputy Director of Security or designee shall review the questionnaire, together with the personnel file of the incumbent, previous reports of investigations concerning the incumbent, and any other appropriate document. The Director of Security or designee shall then determine what further action, if any, is appropriate (for example, a check of local police and credit records, a National Agency Check, or an updated full field investigation).

15. NONSELECTION OF APPLICANT ON SECURITY GROUNDS.

A person being considered for a sensitive position shall, whenever appropriate, be given an opportunity to explain or refute derogatory security information developed in an investigation before being rejected or nonselected on security grounds. The purpose of this pratice is to prevent errors that might result from mistakes in identity or to reveal mitigating circumstances that are otherwise unknown to FLRA. The determination to non-select an applicant is made by the Director of Security in conjunction with the Executive Director/Administrator of the Authority, Associate General Counsel or the Executive Director of FSIP, as appropriate.

16. SUSPENSION OF EMPLOYEE ON SECURITY GROUNDS.

a. Suspending Officers. The Executive Director/Administrator of the Authority, the Associate General Counsel or the Executive Director of Federal Service Impasses Panel, as appropriate, is designated as the Suspending Officer for purposes of this regulation and may suspend any employee in a sensitive position without pay on security grounds.

b. Evaluation by Security Officer Pertaining to Suspension. Upon receipt of an investigative report containing derogatory security information concerning an employee in a sensitive position, the Director of Security shall gather additional facts and information relating to the case. The Director of Security shall evaluate all available data and forward the data and the evaluation to the Suspending Officer.

c. Action by Suspending Officer. The Suspending Officer shall make an immediate determination as to the necessity for suspension of the employee in the interests of national security. The Suspending Officer may:

1. Clear the employee of all charges and provide a written determination to that effect to be included in the employee's personnel and security files.

2. Reassign or detail the employee temporarily to a nonsensitive position.

3. Immediately suspend the employee without pay pending final action on the case.

4. Factors to be considered in making the determination required in Par. 16 above shall include, but not be limited to:

a. The seriousness and conclusiveness of the derogatory information developed.

b. The possible access, authorized or unauthorized, of the employee to security information or material.

c. Opportunity, by reason of the nature of the position, for committing acts adversely affecting the interests of national security.

17. SUSPENSION PROCEDURES.

When an employee is suspended without pay, reassigned or detailed to a nonsensitive position, the following procedures shall be followed:

a. Permanent and indefinite employees. A permanent or indefinite employee who has completed a probationary or trial period and who is a citizen of the United States shall be given, after suspension without pay, reassignment or detail to a nonsensitive position, and before removal:

1. A written statement within 30 days after suspension without pay, or reassignment or detail to a nonsensitive position of the charges which shall be subject to amendment within 30 days and which shall be stated as specifically as security considerations permit;

2. An opportunity within 30 days (plus an additional 30 days if the charges are amended) to answer the charges and to submit affidavits;

3. A hearing, at the employee's request, by a duly constituted agency authority for this purpose;

4. A review of the employee's case by the Chairman or the General Counsel, as appropriate, before a decision adverse to the employee is made final; and

5. A written statement of the decision by the Chairman or the General Counsel, as appropriate.

b. Other employees. After suspension without pay, or reassignment or detail to a nonsensitive position an employee not covered by paragraph 1 above shall, to the extent that the interest of the national security permits, be notified of the reasons for the suspension, or reassignment or detail. The employee shall have the opportunity within 30 days after the notification to submit any statements or affidavits about why the employee should be restored to the sensitive position or, if the employee has been removed, why the employee should be reinstated. The employee may be removed after suspension without pay, reassignment, or detail, when the Chairman or the General Counsel, as appropriate, determines that the removal is necessary or advisable in the interest of the national security.

18. RECOMMENDATIONS TO THE CHAIRMAN OR THE GENERAL COUNSEL.

When an employee is suspended without pay or reassigned or detailed to a nonsensitive position, the Suspending Officer shall consult with the Director of Security, and the two shall jointly recommend disposition of the case to the Chairman of the Authority or the General Counsel, for further review.

19. ACTION BY THE CHAIRMAN OR THE GENERAL COUNSEL.

On the basis of a review of the case, the Chairman or the General Counsel, as appropriate, shall make an initial determination as follows:

a. If the Chairman or the General Counsel, as appropriate, finds that reinstatement of the employee to the position is clearly consistent with the interests of national security, the Chairman of the Authority or the General Counsel, as appropriate, shall clear the employee of all charges. The employee shall be compensated for time lost during the period of suspension.

b. If the Chairman or the General Counsel, as appropriate, finds that retention of the employee in the position is not clearly consistent with the interests of national security but that employment in another position in FLRA is clearly consistent therewith, the employee shall be reassigned to such other

position. NOTE: The Chairman or the General Counsel may, in lieu of action under the security regulations, take appropriate adverse action under the general personnel regulations for unsuitability or other such cause as would promote the efficiency of FLRA.

c. If the Chairman or the General Counsel finds that retention of the employee in any position is not clearly consistent with the interests of national security, the employee shall be given written notice of the initial determination and the charges on which it is based. The employee shall be informed of the right to a hearing on these charges. If the employee exercises such right, the employee shall remain suspended without pay until final decision is rendered.

d. Whenever an adverse action proposed on security grounds affects any employee previously cleared by another agency, the Chairman or the General Counsel, as appropriate, shall consult with the head of that agency to make certain that all relevant information has been considered.

e. Copies of all notices of personnel actions taken on security grounds shall be supplied at once to the Office of Personnel Management. Such actions are to include appropriate language under "Remarks" on the personnel action when an employee resigns while security charges are pending.

20. HEARING ON PROPOSED REMOVAL OR REASSIGNMENT.

a. When the initial determination of the Chairman or the General Counsel is to reassign or remove a suspended employee on security charges, the employee shall have the right to a hearing before a board of three impartial, disinterested persons selected in accordance with the procedures set forth in the Federal Personnel Manual. The employee's request for a hearing must be made to the Office of the Solicitor within ten days after receipt of the initial determination.

b. Subchapter 3 of Chapter 732 of the Federal Personnel Manual describes the procedures to be followed when a hearing is to be held regarding charges relating to national security when removal of the employee from a position is proposed. These procedures will be followed by FLRA in any such hearing.

21. FINAL DECISION BY THE CHAIRMAN OR THE GENERAL COUNSEL.

All, other than favorable, security cases shall be referred to the Chairman or the General Counsel, as appropriate for final decision. Before decision, the Chairman or the General Counsel shall thoroughly review all documents in the case, including the record of the hearing. The employee shall be furnished a written statement of the final decision.

22. REEMPLOYMENT OF PERSONS REMOVED FOR SECURITY REASONS.

Any person whose employment with FLRA is suspended or terminated under 5 U.S.C. 7532 may, at the discretion of the Chairman or the General Counsel be reinstated or restored, to duty under 5 U.S.C. 3571, and if so reinstated or restored, shall be allowed pay as provided by 5 U.S.C. 5596. However, no person whose employment has been terminated for security reasons by a department or agency of the Federal Government other than FLRA shall be employed by FLRA unless the Chairman or the General Counsel determines that such employment is clearly consistent with the interests of national security and unless the Office of Personnel Management determines such person to be eligible for employment. The findings of the Chairman or the General Counsel and the determination of the Office of Personnel Management shall be made a part of the personnel record of the employee concerned.

23. REPORTING VIOLATIONS OF THE LAW TO THE DEPARTMENT OF JUSTICE.

Any violations of the law disclosed in the investigations or proceeding under the security program shall be reported immediately to the Internal Security Division, U.S. Department of Justice.

24. PERSONNEL AVAILABLE FOR HEARING BOARDS.

When requested, qualified personnel from FLRA shall be made available to serve on security hearing boards for other agencies.

This regulation is effective August 8, 1984.

Jan K. Bohren
Executive Director/Administrator

Federal Labor Relations Authority

Washington, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION
FLRA No. 1741.A1

SUBJECT: SMARTPHONE ALLOCATION AND USE

A. INTRODUCTION

1. **Purpose.**

The Federal Labor Relations Authority (FLRA) provides a Smartphone or similar device (hereinafter "Smartphone") to an employee who needs it in the performance of Agency work. A Smartphone is a wireless mobile device that provides for two-way communication by phone, internet, and e-mail.

2. **Scope.**

This Instruction applies to all FLRA employees.

3. **Overall.**

The provision of a Smartphone is subject to Agency budget considerations, as determined by the Chairman.

4. **References**.

a. Federal Management Regulation (FMR) - Subchapter F (Telecommunications)

b. Federal Information Security Management Act of 2002 (44 U.S.C. §§ 3541 et seq.)

c. Department of Homeland Security / Federal Labor Relations Authority - Trusted Internet Connection (TIC) Memorandum of Understanding.

d. Hatch Act - (5 U.S.C. §§ 7321-7326).

e. Federal Labor Relations Authority - Acceptable Technology Use Instruction (FLRA Instruction No. 6930).

f. Federal Labor Relations Authority – FLRA Internet Access Instruction (FLRA Instruction No. 6920)

B. EMPLOYEE ELIGIBLITY

Consistent with the requirement that use of a Smartphone is necessary to perform Agency work, and provided that funding is available, the following are eligible for an Agency Smartphone:

1. Presidential appointees;

2. Members of the Senior Executive Service;

3. Employees who routinely are involved in Agency communications outside normal work hours; and

4. Other employees in documented, special circumstances.

C. GENERAL PROVISIONS

1. A Smartphone is at all times the property of the FLRA and an individual may be required to return a Smartphone to the Agency at any time deemed necessary.

2. An employee authorized the use of a Smartphone device will have to sign a user agreement in accordance with the Department of Homeland Security, DHS/FLRA Memorandum of Understanding, prior to activation and/or use.

3. An employee to whom a Smartphone is provided is responsible for care and security of the device.

   a. Passwords or Pins must be used to prevent access by unauthorized users. The Smartphone user is responsible for ensuring the confidentiality of passwords and pins.

   b. In the event a device is lost or stolen, the user must immediately report the loss to his/her supervisor and the Chief Information Officer (CIO). Any theft must also be reported to the police and the user must obtain an incident number that is passed on to the Information Resources Management Division (IRMD) with the report.

4. Smartphone may not be taken internationally without notifying IRMD in advance and without approval of the Executive Director.

5. Smartphone uses and charges are monitored by the Agency.

6. Incidental personal use of a Smartphone is permitted but extensive personal use, as determined by the Executive Director, may require the user to reimburse the FLRA.

D. INDIVIDUAL RESPONSIBILITIES AND PROHIBITIONS

1. **Smartphone user**. A Smartphone user has no reasonable expectation of privacy regarding any communications or data transiting or stored on the information system. At any time, the Government may for any lawful Government purpose monitor, intercept, and search and seize any communication or data transiting or stored on the information system.

Specifically, users are prohibited from using the device for:

a. Engaging in activities that violate copyright law, including downloading, distributing, and/or copying copyrighted materials in violation of law.

b. Obtaining and using, or attempting to obtain and use, passwords, Internet Protocol (IP) addresses or other network codes that have not been assigned to the user.

c. Using a Smartphone to either: (i) sell or solicit sales for any goods, services or contributions unless such use conforms to rules and regulations governing the use of FLRA resources; or (ii) to engage in activity restricted by the Hatch Act.

2. **Chief Information Officer**. The CIO is responsible for all Smartphone resources. The CIO will manage account set up, monitor Smartphone use, and report to the Executive Director any suspected Smartphone misuse.

3. **Manager**. The manager of an employee with a Smartphone is responsible for establishing that a Smartphone is necessary.

4. **Executive Director**. The Executive Director is responsible for approving or disapproving a request for a Smartphone consistent with this policy. The Executive Director will review any Smartphone misuse as reported by the CIO.

E. EFFECTIVE DATE

The policies addressed in this instruction are effective immediately and replace any prior conflicting FLRA policies involving blackberries or Smartphone related technology.

Sarah Whittle Spooner
Executive Director

4/28/2014
Date

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Washington D.C. 20424-0001

By signing this document, you understand and consent to the following when you access this Agency's information systems, which includes: (1) the computer used to access the information system; (2) the computer network accessed; (3) all computers connected to the accessed network; and (4) all devices (e.g., Smartphone, PDA, etc.) and storage media (e.g., thumb drive, flash drive etc.) attached to the network or to a computer on the network:

You are accessing a U.S. Government information system that is provided for U.S. Government-authorized use only;

Unauthorized or improper use of the information system may result in disciplinary action, as well as civil and criminal penalties;

The Government routinely monitors communications occurring on this Agency's information systems. You have no reasonable expectation of privacy regarding any communications or data that is transiting or stored on these information systems. At any time, the Government may for any lawful Government purpose monitor, intercept, search and seize any communication or data transiting or stored on this Agency's information systems;

Any communications or data that is transiting or stored on this Agency's information systems may be disclosed or used for any lawful Government purpose.

I understand and consent.

_____ _____

User name Date

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

INSTRUCTIONS

FLRA 3311.2

SUBJECT: STUDENT EDUCATIONAL EMPLOYMENT AND STUDENT VOLUNTEER SERVICE PROGRAMS

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DISTRIBUTION: FLRA **OPI: HRD**

Chapter I. GENERAL PROVISIONS

A. **Purpose.** This Instruction prescribes the policies and procedures for implementing and administering the Student Educational Employment and the Student Volunteer Service Programs at the Federal Labor Relations Authority (FLRA).

B. **Cancellations.** This Instruction supersedes the Cooperative Education Program for Baccalaureate and Graduate Students, FLRA Instruction 3311.1A, dated October 2, 1984.

C. **References.**

1. Title 5 Code of Federal Regulations (5 CFR), 213.3202(a), Student Educational Employment Program

2. Title 5 Code of Federal Regulations (5 CFR), Part 308, Volunteer Service

D. **Scope.** This Instruction applies to all components of the FLRA.

E. **Policy.** Based on its mission needs and budget, the FLRA will provide meaningful educationally related work experience for students that contributes to the development of a future productive work force. This student employment program will benefit the FLRA and those students who want career experience, and/or who have academically required internships or other related course requirements that can be fulfilled at the FLRA.

F. **Definitions.**

1. Agreement. A written document developed jointly between the academic institution (if course credit is awarded) and the FLRA, and/or the student and the FLRA to outline the responsibilities of each and to identify the conditions or limitations under which the student will receive career-related experience.

2. Break in program. A period of time when a program participant is neither attending classes nor working at the agency.

3. Half-time. Definition regarding the student's enrollment status that is provided by the school in which the student is enrolled.

4. Student. An individual who is enrolled or accepted for enrollment as a degree (diploma, certificate, etc.) seeking student and is taking at least a half-time academic/vocational or technical course load in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. This definition also includes student participants in the Harry S. Truman Foundation Scholarship Program for purposes of the Student Career Experience

Program under the provision of Public Law 93-842.

5. Student Educational Experience Program. A Federal employment program that provides compensated opportunities to students who are enrolled or accepted for enrollment as degree seeking students taking at least a half-time academic, technical, or vocational course load in an accredited high school, technical, vocational, two or four-year college or university, graduate or professional school. This program replaces the Federal Student Employment Program consisting of the Cooperative Education Program, Federal Junior Fellowship Program, Stay-in-School Program, and the Harry S. Truman Scholarship Program. The Student Educational Experience Program consists of the Student Temporary Employment Program and the Student Career Experience Program and students participating are compensated for work performed.

6. Volunteer Service. Uncompensated (unpaid) services performed by a student as part of the FLRA's program established to provide educational experience for the student.

G. **General Requirements.** Participant(s) must meet the definition of "student" above. Participation in this program must conform to Federal, State or local laws and standards governing the employment of minors. A student may work in the same agency with a relative, provided there is no direct reporting relationship and the relative is not in a position to influence or control the employment, promotion or advancement of the student. There is no requirement for students to meet specific financial criteria in order to participate in this program. These are year-round programs and appointments may be made at any time during the year. Students may work full or part-time, but work schedules should not conflict with the students' academic schedules.

Chapter II. STUDENT EDUCATIONAL EMPLOYMENT PROGRAM

A. **Student Career Experience Program.** This formally structured program provides directly related compensated work experience to the student's academic program and career goals and could result in a conversion to a career or career-conditional appointment. A written agreement is required by all parties (agency, school, student). Students are appointed in the Excepted Service to a permanent position and are subject to requirements governing career and career-conditional employment. The student may be converted to a permanent position in the competitive service within 120 days of graduation. If not converted, the graduate must be separated at the end of the 120 days.

1. Appointing Authority. Students are appointed under Schedule B 213.3202(b).
2. Agreements. A written agreement by all parties is required as to the nature of work assignments; schedule of work assignment and class attendance; evaluation procedures; and requirements for continuation and successful completion.

3. Qualifications. Students will be evaluated by the appropriate Agency standard or by the OPM qualifications.

4. Benefits. Students appointed under this program earn annual and sick leave; are generally covered by the Federal Employees Retirement System (FERS); and may be eligible for life and health insurance.

5. Reduction-in-Force. Students in this program are in the Excepted Service, Tenure Group II for purposes of reduction-in-force.

6. Conversion to Career or Career-Conditional Appointments. Students may be converted non-competitively at any time within 120 days after satisfactory completion of the requirements for his/her diploma/certificate or degree. The non-competitive conversion may be to a position within the same agency or any other agency within the Federal Government and appointed under Executive Order 12015, provided that the students:

   a. Have completed at least 640 hours of career-related work before completion of or concurrently with, the course requirements;

   b. Are recommended by the employing agency in which the career-related work was performed;

   c. Meet the qualification standards for the targeted position to which the student is appointed; and

   d. Are being converted to an occupation related to the student's academic training and career-related work experience.

B. **Student Temporary Employment Program.** Students are appointed in this program to a position not to exceed one year. Appointments may be extended in one-year increments, as long as the individual meets the definition of a student. The nature of the duties does not have to be related to the student's academic program. After the student has completed the requirements for a degree, diploma, certificate, etc., he/she must be separated because he/she is no longer a student and thus no longer meets basic eligibility for the program. If the student is enrolled or accepted for enrollment in a new educational program, he/she may be reappointed.

1. Appointing Authority. Students are appointed under Schedule B 213.3202(a).

2. Qualifications. Students will be evaluated by the appropriate Agency standard or by the OPM qualifications.

3. Promotions. Students are eligible for promotions, which are documented as a conversion to another excepted appointment. Promotions are processed by citing the same authority

as was used for the original appointment and maintaining the original not-to-exceed date.

4. Benefits. Students under this program are eligible for annual and sick leave; are generally not eligible for retirement coverage; and may be eligible for health and life insurance.

5. Reduction-in-Force. Students who have completed one year of current continuous service are in excepted service Tenure Group III for purposes of reduction-in-force.

6. Non-Competitive Conversion to a Career or Career-Conditional Appointment. Students are not eligible for non-competitive appointment to a career or career-conditional appointment under Student Temporary Employment authority.

7. Conversion to Student Career Experience Program. Students may be converted non-competitively to the Student Career Experience Program when they meet the requirements for that program, and the Agency has an appropriate position.

   a. If the student has work experience gained while in the Student Temporary Employment Program, related to his/her academic program and career goals, this experience may be credited toward the 640-hour work experience necessary for non-competitive conversion to a career conditional or career appointment.

   b. Non-competitive conversions mean conversions that are not subject to the posting, rating, ranking and selection requirements of 5 CFR Part 302, Subparts C and D.

Chapter III. STUDENT VOLUNTEER SERVICE PROGRAM

A. **Basic Requirements.** This program is designed to benefit students who have academically required internships or other related course requirements. Volunteer service is uncompensated; limited to those services that will be awarded academic credit or can be certified as related to the academic process; and if course credit is granted, performed with the permission of the institution at which the student is enrolled. The institution at which the student is enrolled must determine the academic credit to be earned prior to a student's entering the volunteer service. Participants must meet the definition of "student" described in this Instruction and they are not considered Federal employees for any purposes except for injury compensation and laws related to the Tort Claims Act. Service is not creditable for leave or any other employee benefits. The volunteer service program will not be used to displace participants of the Student Educational Employment Program or to staff a vacancy so designated.

B. **Program Responsibility.**

1. FLRA has the following responsibilities:

    a. If applicable, develops policy and agreements with participating academic institutions to ensure that the program is carried out in accordance with guidelines and terms of the agreement.

    b. Designates a Program Coordinator to administer the program and serve as the point of contact with interested institutions and to ensure that fair and equitable selection procedures are developed and implemented.

    c. Provides structured assignments and opportunities for experience that reflect program objectives and allow for measurable evaluation of student volunteer performance.

    d. Certifies and documents student participation in and completion of the program.

    e. Provides all participants with opportunities to evaluate the program in reference to program objectives.

    f. Ensures that the Student Volunteer Program neither jeopardizes other student employment programs nor contributes to erosion of the position duties of other employees.

2. Academic Institutions have the following responsibilities:

    a. Administer a program information distribution system that ensures that all students are given equal opportunity to apply for referral.

    b. Provide the FLRA with the name of a school official to whom inquiries can be directed.

    c. Provide resumes of Student Volunteer Program applicants.

    d. Provide information necessary for the FLRA to provide students with structured, meaningful assignments that meet the academic requirements of the institution.

    e. Inform the FLRA of any changes in program participants' status.

3. Volunteer Program Participants have the following responsibilities:

    a. Maintain acceptable performance, attendance, and conduct so as not to disrupt the normal workflow.

b. Provide information which may be needed for certain reporting requirements.

C. **Volunteer Service Agreements.** The Human Resources Division will ensure that all agreements conform to appropriate guidelines.

1. Volunteer Service Agreement (Academic Institution). Agreements will be negotiated with participating academic institutions when the student is to receive course credit. Each agreement will be written and will contain a general statement of understanding, program objectives, and responsibilities of the FLRA, the institution, and the student volunteer. Agreements will be signed by an authorized representative of the academic institution and the FLRA selecting official. A sample of a Volunteer Service Agreement (Academic Institution) is provided on Attachment A.

2. Volunteer Service Agreement (Student Volunteer). The FLRA will negotiate agreements with participating students when the assignment is not for the purpose of course credit. The agreement will contain conditions of the volunteer service and status of the student. Agreements are signed by the participating student and the Human Resources representative. A sample Volunteer Service Agreement (Student Volunteer) is provided on Attachment B.

D. **Documentation of Service.**

1. A Standard Form 50 (SF-50), Notification of Personnel Action, is used to document beginning and terminating volunteer service. Remarks on the terminating SF-50 will contain a statement of total service rendered between the beginning and ending dates. An SF-50 Termination action is processed to document separation of participants who fail to meet the terms of the agreement.

2. An Official Personnel Folder (OPF) is established for each student volunteer and transmitted to the Federal Personnel Records Center upon termination of the student volunteer appointment.

Chapter IV. PROGRAM ADMINISTRATION AND EVALUATION

This Instruction is administered and evaluated by the Human Resources Division (HRD). Questions and suggestions for improvements are welcome and should be directed to the HRD.

This Instruction is effective: August 24, 1998.

Signed

_____

Solly Thomas
FLRA Executive Director

Attachment A

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
VOLUNTEER SERVICE PROGRAM AGREEMENT (ACADEMIC INSTITUTION)

This agreement constitutes a mutual understanding between the (*Office*), of the Federal Labor Relations Authority (FLRA) and the (*Institution*), for the purpose of placing (*Student*), in a volunteer, nonpaid work assignment as part of a program established to provide educationally-related work experience for the student. Both parties agree that:

1. (*Student*) is officially enrolled in a course of study at the above-named institution;

2. The above-named institution has given permission for the above-named student to volunteer his/her services;

3. The services to be rendered are to be uncompensated, i.e., nonpaid volunteer service; and

4. The participating student is not considered to be a Federal employee for any purpose other than for:

    a. Federal Tort Claims provision published in 28 U.S.C. 2671 through 2680. Claims arising as a result of student participation should be referred to the Federal Labor Relations Authority; and
    b. U.S.C. 8101 through 8193, relative to compensation for injuries sustained during the performance of work assignments. Claims related to injuries should be referred to the Office of Workers' Compensation Programs, U.S. Department of Labor for adjudication.

The period of volunteer service involved in this agreement commences on or about (*date*) and will end on or about (*date*).

The (*Office*) will maintain an attendance record showing the dates and hours of the student's attendance on the job. In addition, the (*Office*) will provide the above-named institution with a supervisory appraisal of the student's performance that meets the academic crediting requirements of the institution, if any, upon completion of the volunteer service period.

Institution or authorized representative:	Federal Labor Relations Authority:
_____	_____
(Signature)	(Signature of Selecting Official)
_____	_____
(Typed Name)	(Typed Name)
_____	_____
(Title)	(Title)
_____	_____
(Organization)	(Organization)

WAIVER OF COMPENSATION

In connection with my services as a student volunteer in the (*Office*), I understand that I will be working during the period (*Date*), to (*Date*), without compensation and I hereby agree to waive any and all claims against the Government for salary or wages on account of services performed.

_____	_____
(Signature of Student)	**(Date)**

Attachment B

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
VOLUNTEER SERVICE PROGRAM AGREEMENT (STUDENT)

This agreement constitutes a mutual understanding between the Federal Labor Relations Authority (FLRA) and *(Student)*, a volunteer in a program established for the purpose of providing educationally-related work experience for the student. Both parties agree that:

1. The services to be rendered are to be uncompensated (nonpaid volunteer service);

2. The participating student is not considered to be a Federal employee for any purpose other than for:

   a. The Federal Tort Claims provision published in 28 U.S.C. 2671 through 2680. Claims arising as a result of student participation should be referred to the Federal Labor Relations Authority; and

   b. U.S.C. 8101 through 8193, relative to compensation for injuries sustained during the performance of work assignments. Claims related to injuries should be referred to the Office of Workers' Compensation Programs, U.S. Department of Labor for adjudication.

3. The volunteer service does not lead to non-competitive permanent employment with the FLRA.

The period of volunteer service involved in this agreement commences on or about _____ and will end on or about _____.

Federal Labor Relations Authority

_____ _____

(Human Resources Division Representative) (Date)
(Signature & Title)

_____ _____

(Signature of Student) (Date)

WAIVER OF COMPENSATION

In connection with my services as a student volunteer in the Federal Labor Relations Authority, I understand that I will be working during the period _____ , to _____ ____ , without compensation and I hereby agree to waive any and all claims against the Government for salary or wages on account of services performed.

_____ _____

(Signature of Student) **(Date)**

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION

FLRA No. 3650.2
09/24/2013

SUBJECT: **TELEWORK**

TABLE OF CONTENTS

A. GENERAL PROVISIONS

1. Purpose.

a. This Instruction prescribes the policies and procedures for the implementation and administration of the Federal Labor Relations Authority's (FLRA or Agency) program for teleworking. Teleworking, also known as flexiplace, flexible workplace, work-at-home, and telecommuting, refers to paid employment that is not travel, performed away from an employee's regular duty station, generally in the employee's home.

b. The purpose of implementing the teleworking program is to: (1) improve employee morale and job satisfaction; (2) reduce the use of sick leave; (3) improve employee retention and recruitment; (4) provide gains to the environment by reducing commuting to a centralized workplace; (5) reduce costs; and (6) increase productivity.

2. Scope. This Instruction applies to all FLRA employees.

3. Policy.

a. FLRA's teleworking program has four plans: (1) regularly scheduled; (2) special projects; (3) special circumstances; and (4) temporary medical. Participation in this program is voluntary, and it is not an employee entitlement. Requests to participate in the FLRA's teleworking program will be considered fairly and equitably.

b. Employee participation requires authorization of the appropriate approving official. The appropriate approving official is responsible for: (1) deciding the kind of work that is appropriate off-site work; (2) examining the content of the work; (3) evaluating employee performance and conduct; and (4) approving the employee's flexible worksite.

c. Teleworking will be considered for emergency situations that involve national security, extended emergencies, or other unique situations. As a result, employee's teleworking on the day of an emergency agency closure can be required to continue working from their alternative worksite if the closure occurs on their telework day. In addition, teleworkers may be designated as either "emergency" or "mission critical" employees. These designations are an integral part of the Agency's Continuity of Operations Planning (COOP) and emergency evacuation plans. Teleworking will also be considered as an alternative when planning for any building renovation.

d. Employees who agree to participate in the telework program under one of the above-listed plans are required, if they have portable work at their flexible

worksite, to telework when an office-closure announcement is made by either OPM or a Regional Director.

e. An employee's participation in a teleworking plan shall not adversely affect the performance of other employees or the work of any FLRA office. If a work conflict arises, the overall interests of the employee's office shall take precedence over the employee's participation in a teleworking plan.

f. The Agency will not be liable for damages to employees' personal or real property during the course of their performance of official duties, or while the participant is using Government equipment at the flexible worksite, except to the extent that the Agency is liable under the Federal Tort Claims Act or under the Military Personnel and Civilian Employees' Claims Act of 1964.

g. The Agency will not be responsible for any costs associated with maintenance of the flexible worksite or other incidental costs (e.g., utilities) at the participant's worksite.

h. Participants will use Agency-purchased supplies and services to perform their work to the maximum extent possible (e.g., paper, tablets, envelopes, Agency Federal Express account, courier services, and toll-free numbers). For situations in which participants must incur an expense while conducting authorized portable work, they are entitled to reimbursement if permitted by law and regulation and pre-approved by their supervisor.

i. Participants are covered to the extent authorized by the Federal Employees' Compensation Act if injured while performing official duties for the Agency.

j. Participants will apply appropriate safeguards to protect Government Agency records from unauthorized disclosure or damage and will comply with requirements of the Privacy Act of 1974, 5 U.S.C. § 552a.

k. An employee's official duty station will not change as a result of participation in the teleworking program. All pay, leave, and benefits will continue to be based on the employee's official duty station, not the employee's flexible worksite.

l. Participants are bound by Agency standards of conduct while working at the flexible worksite.

m. A participant's flexible worksite is subject to inspection in accordance with paragraph B.l.b below.

4. References.

a. Telework legislation.

(1) Pub. L. No. 104-52, § 620

(2) Pub. L. No. 105-277, title IV, § 630

(3) Pub. L. No. 106-346, § 359

(4) Pub. L. No. 108-199, division B, § 627

(5) Pub. L. No. 108-447, division B, § 622

b. Bulletins.

(1) Federal Management Regulation (FMR) Bulletin 2006-B3

(2) FMR Bulletin 2007-BI

c. *Status of Telework in the Federal Government*, OPM, December 2008.

d. *A Guide to Telework in the Federal Government*, OPM.

e. *Dismissal and Closure Policy*, FLRA Regulation 3651, March 4, 2013.

5. Definitions.

a. Approving Official. The approving official for an employee's participation in the telework program is the responsible management official for the employee's office.

b. Family Member. For the purpose of this Instruction, family member is defined, consistent with 5 C.F.R. part 630, to include: (1) spouse, and parents thereof; (2) children, including adopted children, and spouses thereof; (3) parents; (4) brothers and sisters, and spouses thereof; and (5) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

c. Portable Work. This is FLRA work which may be productively performed within the local commuting area at a worksite other than the employee's official duty station. Some examples of portable work include: (1) writing representation case decisions and orders; (2) writing legal briefs; (3) writing reports on challenges and objections to elections; (4) writing agenda minutes and final investigative reports; (5) reviewing transcripts or backpay calculations; (6) drafting issue memoranda and decisions; (7) drafting of

internal instructions; (8) conducting research; and (9) reviewing pleadings and post-hearing briefs.

d. Regularly Scheduled Plan. This plan is one in which an employee is approved to work at a flexible worksite at least one day a week on a regularly scheduled workday, provided that there is sufficient portable work that can be performed at the flexible worksite and the operating needs of the employee's office do not require the presence of the employee in the office.

e. Special Projects Plan. This plan is one in which an employee is approved, on a short-term basis, to work at a flexible worksite on a specific project performing portable work.

f. Special Circumstances Plan. This plan is one in which an employee is approved, on a short-term basis, to perform portable work at a flexible worksite because access to the duty site is limited as a result of a public exigency outside the employee's or the Agency's control. Circumstances include, for example, an earthquake, a major transit strike, technological or power failure, or a significant special event.

g. Temporary Medical Plan. This plan is one in which an employee is approved, on a short-term basis, to work at a flexible worksite when an employee or family member has a temporary medical condition that temporarily limits the employee's ability to commute to and from the office. Under these conditions, an employee may be permitted to perform portable work at a flexible worksite for a limited period of time to meet the temporary medical situation.

6. Responsibilities.

a. Approving Officials. Approving officials will: (1) determine if an employee can participate in the telework program for their respective offices; (2) assign appropriate portable work; (3) maintain accurate records and information to assist in the evaluation of the telework program; and (4) inform employees about reasonably foreseeable circumstances related to the FLRA's *Dismissal and Closure Policy*.

b. Participants. Participants will: (1) complete a Telework Program Work Agreement (Attachment A); (2) complete the Self-Certification Safety Checklist (Attachment B); (3) observe established hours of work in accordance with FLRA and Government-wide policies; (4) follow FLRA and Government-wide policies for requesting leave; and (5) use Government equipment and property only for official purposes.

c. Telework Managing Official. The telework managing official is responsible for providing advice, assistance, training, and guidance to FLRA managers, supervisors, and employees regarding the telework program.

7. **Employee Participation.**

a. Regularly Scheduled Program Plan.

To be eligible for participation in the regularly scheduled program plan, an employee must:

(1) have portable duties and sufficient portable work for a regular telework schedule;

(2) normally have 12 months of work experience with the FLRA, unless waived by the employee's approving official;

(3) be performing acceptably;

(4) not be on a performance improvement plan; and

(5) have demonstrated the ability to work independently and reliably with a minimum of supervision.

b. Special Projects, Special Circumstances, and Temporary Medical Plans.

All employees regardless of experience, position type, or grade level are eligible to participate in these plans.

B. TELEWORK PROGRAM REQUIREMENTS

1. **Physical Work Space.**

a. The opportunity to participate in the telework program is based upon the understanding that it is the responsibility of the employee to ensure that a proper work environment is maintained at the employee's flexible worksite. Participants must have a designated work space for performance of their duties. Employees are responsible for ensuring that their workplace is clean and free of obstructions, in compliance with all building codes, and free of hazardous materials.

b. A supervisor may deny an employee the opportunity to participate or may rescind a telework work agreement based on safety problems in the workplace or suspected hazardous materials. The Agency reserves any legal right it may have to inspect, or have its agents or representatives inspect, the telework worksite.

2. **Equipment and Software.** If the Agency provides the participant with information technology equipment, such as a laptop computer or encrypted device, the participant agrees to utilize the equipment when teleworking. The participant must use and protect Government equipment in accordance with applicable laws, regulations and procedures. Only Government-owned equipment will be serviced and maintained by the Government.

3. **Participant Work Hours and Availability.** The participant must be able to easily communicate by telephone with the supervisor and other staff members during the scheduled work hours. Personal disruptions such as non-business telephone calls and visitors are to be kept to a minimum. Participants understand that they will only work overtime when ordered and approved by their respective supervisors in advance and that work without such approval is not compensated.

4. **Work Agreement.** All participants must sign a work agreement that covers the terms and conditions of their participation. The work agreement constitutes an agreement by the participant to adhere to applicable guidelines and policies. A copy of the completed and signed work agreement will be provided to the employee and to the telework managing official. The approving official will maintain the original work agreement.

5. **Adjustments to Work Schedules.** Establishing work schedules for participants in the telework program may require periodic adjustments to achieve an optimal work schedule for a particular participant and that participant's office. An approving official may designate a specific day or days of the week for which teleworking will not be approved to meet the needs of the office. Also, to meet the operating needs of an office on any workday, an approving official may cancel a participant's regularly scheduled telework workday and require a participant to come into the office. A participant may request a temporary change in a specific telework workday. An approving official has the discretion to approve or disapprove such a change, consistent with the operating needs of the office. Participants who cannot work at their flexible worksite at a particular time cannot save or accumulate their telework workdays. However, when the participant's regularly scheduled telework workday is canceled by management, the participant may request to reschedule the telework workday within the same pay period.

6. **Administrative Leave, Dismissals, and Closings.** Although a variety of circumstances may affect individual situations, the principles governing administrative leave, dismissals, and closings remain unchanged. The ability to conduct work (and the nature of any impediments), whether at the flexible worksite or at the office, determines when a participant may be excused from duty. For example, if a participant is working at the flexible worksite, and the participant's office closes, the participant normally will continue to work at the flexible worksite; or if the participant's electricity fails while working at the flexible worksite, the supervisor may grant administrative leave or direct the participant to report to the office. When participants know in advance of a situation that would preclude working at their flexible worksite, they must come to the office or request appropriate leave.

7. **Monitoring and Certification of Participant Work Time.** Participants have the responsibility to accurately report time and attendance to ensure that they are paid only for work performed and that absences during a scheduled tour of duty are accounted for appropriately. Participants will also identify telework hours on their time and attendance reports. Participants must notify their supervisor of any absence from the flexible worksite. Federal policies and procedures governing certification of an employee's time and attendance require agencies with employees working at remote sites to provide reasonable assurance that they are working when scheduled. Reasonable assurance can be accomplished if supervisors discuss with participants their expectations regarding the participant's performance, availability, and means of communication when they are on telework status and monitor whether participants meet these expectations.

C. REQUEST AND APPROVAL TO WORK A TELEWORK PLAN

1. **General.** All employees who wish to participate in the telework program must submit a written request to the appropriate approving official. The approving official will normally make a decision regarding participation within the same pay period as the request.

2. **Regularly Scheduled Plan.** Employees who meet all of the eligibility standards set forth above and wish to participate in the regularly scheduled plan must include in their request the specific day or days of the week they desire to work at their flexible worksite.

3. **Special Project or Special Circumstances Plan.** The approving official of a participant in a special project or special circumstances plan will establish a specific timeframe for the special project or special circumstances.

4. **Temporary Medical Plan.** An employee who requests a temporary medical plan arrangement will have a specific timeframe established by the approving official based upon the anticipated duration of the medical situation. The employee must submit administratively acceptable evidence confirming the employee's or the family member's medical or health condition, and the anticipated period of time needed for a temporary medical plan. Normally, an employee's self-certification will be sufficient. However, in circumstances where management may have reasonable cause, the Agency may require medical certification that the employee is able to perform work at a flexible worksite. By mutual agreement of the approving official and the employee, the original period of time approved for a temporary medical plan arrangement may be revised.

D. TERMINATION OF A PARTICIPANT'S TELEWORK PLAN

1. **Responsibility.** The appropriate approving official, with advice and guidance from the telework managing official, may terminate a participant's telework plan based upon that participant's performance or conduct, or based upon the operating needs of the participant's office. Participants may end their participation in a telework plan by providing written notice to the appropriate approving official.

2. **Notice to Participant.** The Agency normally will provide written notice at least 15 calendar days prior to the termination of an employee's participation in the telework program.

3. **Alternative Dispute Resolution Process.** An employee whose request to work a telework plan is denied or whose participation is involuntarily terminated may invoke the following alternative dispute resolution (ADR) process.

(a) A meeting between the parties (the employee and the supervisor), either face-to-face or telephonically, will be arranged to attempt to resolve the dispute.

(b) The UAE will be provided notice and an opportunity to attend the meeting when the dispute involves a bargaining-unit employee.

(c) The meeting may include a facilitator, mutually agreed upon by the parties.

(d) The parties will meet at mutually agreeable times to attempt to resolve the dispute.

(e) Offers to settle and aspects of settlement discussions will not be used as evidence or referred to if the matter is not resolved.

(f) If the matter is resolved, the parties agree to immediately implement the resolution.

(g) If the dispute remains unresolved following use of the ADR process, non-bargaining unit employees may grieve through the FLRA's administrative grievance procedure and bargaining-unit employees may grieve through the FLRA/UAE negotiated-grievance procedure.

(h) This ADR process will be completed within 10 workdays unless the parties mutually agree otherwise.

(i) The time limits for filing a grievance will be suspended during the ADR process.

E. TRAINING

1. **Responsibility.** The telework managing official is responsible for providing training on the telework program, policies, and guidelines and on the personal and occupational aspects of the program.

2. **Managers, Supervisors, and Employees.** All managers, supervisors, and employees involved in the telework program, pursuant to this Instruction, will receive training. Such training is required before an employee may participate in this program.

F. EFFECTIVE DATE

The policies addressed in this Instruction are effective November 1, 2013, and replace any prior conflicting FLRA policies involving Flexiplace or Telework.

Sarah Whittle Spooner
Executive Director

9/23/2013
Date

Telework Program Work Agreement
Attachment A

The following constitutes an agreement on the terms and conditions of the telework arrangement between the Federal Labor Relations Authority and _____.

Indicate the telework-program plan(s) to which this Agreement applies. Explain as appropriate:

☐ Regularly Scheduled Plan – Employee's telework workday(s) is (are):

☐ Special Projects Plan:

☐ Special Circumstances Plan:

☐ Temporary Medical Plan:

Employee's flexible worksite is located at (address):

Telephone number at flexible worksite:

Write your initials to the left of each numbered statement below to indicate your agreement with the terms and conditions set forth in that statement. Unless otherwise indicated (as in #2), you must indicate agreement with all numbered statements in order to telework.

_____ 1. I have completed the OPM-required training course concerning telework ("Telework 101 for Employees"). *(After initialing this statement, please check the appropriate box below regarding your training-completion certificate.)*

☐ I provided my training-completion certificate when I completed a prior Telework Agreement.

☐ I have attached my training-completion certificate to this Agreement.

_____ 2. **Only required for employees seeking approval for a <u>Regularly Scheduled</u> Plan:** I have 12 months' work experience at the FLRA, *or* my approving official has affirmatively waived this work-experience requirement. *(If you do not have 12 months' work experience but your approving official has granted you a work-experience waiver, then your approving official should initial to the right of this statement to indicate that he or she affirmatively waives the work-experience requirement in your case.)*

Waiver: _____

_____ 3. My participation in the telework program shall not adversely affect the performance of other employees or the work of any FLRA office. If a work conflict arises, the overall interests of my office shall take precedence over my working at the flexible worksite.

_____ 4. The Agency will not be liable for damages to my personal or real property during the course of my performance of official duties, or while I am using Government equipment at the flexible worksite, except to the extent that the Agency is liable under the Federal Tort Claims Act or under the Military Personnel and Civilian Employees' Claims Act of 1964.

_____ 5. The Agency will not be responsible for any costs associated with maintenance of my flexible worksite or other incidental costs (e.g., utilities) at my worksite. I understand that I am entitled to reimbursement for authorized operating expenses incurred while conducting business for the Government at the flexible worksite as permitted by appropriate laws and regulations, and as approved by my supervisor.

_____ 6. I understand that I am covered to the extent authorized by the Federal Employees' Compensation Act if injured while at my flexible worksite performing official duties for the Agency.

_____ 7. I understand that I must apply appropriate safeguards to protect Government/Agency records from unauthorized disclosure or damage and will comply with requirements of the Privacy Act of 1974, 5 U.S.C. § 552a.

_____ 8. My official duty station will not change as a result of participation in the telework program. All pay, leave, and benefits will continue to be based on my official duty station, not the location of my flexible worksite.

_____ 9. I understand that I am bound by Agency standards of conduct while working at my flexible worksite.

_____ 10. As a participant in the telework program, I understand that I am subject to the same performance standards when I telework as when I work at my official duty station. I must meet my supervisor's expectations regarding performance, availability, and means of communications when I am on telework status.

_____ 11. I understand that, if the Agency provides me with information technology equipment, such as a laptop computer or an encrypted device, I will use such equipment when teleworking. When I use any Government equipment, I will use and protect the equipment in accordance with applicable laws, regulations, and procedures. Only Government-owned equipment will be serviced and maintained by the Government.

_____ 12. I understand that I must be able to easily communicate by telephone with my supervisor and other staff members during scheduled work hours. I will only work overtime when ordered and approved by the supervisor in advance and understand that work without such approval is not compensated.

_____ 13. In order to meet the operating needs of the office on any workday, my approving official may cancel my regularly scheduled telework workday and require me to come into the office. I understand that I may request a temporary change in a specific telework workday, and that my approving official has the discretion to approve or disapprove such a change, consistent with the operating needs of the office.

_____ 14. I understand that if I cannot work at my flexible worksite in a particular week, I cannot bank or accumulate in any manner my telework workday. However, if my regularly scheduled telework workday is canceled by management, I may request to reschedule the telework workday within the same pay period.

_____ 15. I understand that, if I have portable work at my flexible worksite, then I am required to telework when my office is closed pursuant to an announcement by either OPM (for employees at headquarters) or a Regional Director (for employees at a regional office). I may consult the FLRA *Dismissal and Closure Policy* for further guidance.

_____ 16. I understand that my ability to conduct work (as well as the nature of any impediments) at my flexible worksite determines when I may be excused from duty at my flexible worksite. For example:

- If I am working at my flexible worksite, and my regular office closes, then I will normally continue to work at the flexible worksite.
- If the electricity fails while working at my flexible worksite, then my supervisor may grant administrative leave or direct me to the office.

When I know in advance of a situation that would preclude working at my flexible worksite, I must come to the office or request appropriate leave.

_____ 17. I have the responsibility to accurately report time and attendance to ensure that I am paid only for work performed and that absences during a scheduled tour of duty are accounted for appropriately. I will identify telework hours on my time and attendance reports. Federal policies and procedures governing certification of an employee's time and attendance require the Agency to provide reasonable assurance that I am working when scheduled. I understand that reasonable assurance may include visits by Agency managers to my flexible worksite during work hours when there is reasonable cause to suspect abuse of the program. Management will provide the UAE reasonable notice prior to visiting a bargaining-unit employee's flexible worksite.

Employee's Signature: _____ Date: _____

Supervisor's Signature (if different from Approving Official): _____

Date: _____

Approving Official's Signature: _____ Date: _____

cc: Employee, Supervisor, Approving Official, Telework Managing Official

Self-Certification Safety Checklist for Telework Workers
Attachment B

Employee's Name: _____

Organization: _____

The following checklist is designed to assess the overall safety of your f1exible worksite. Read and complete the self-certification safety checklist. Upon completion, you and your approving official should sign and date the checklist in the spaces provided.

A. Description of work area at the flexible worksite (e.g., basement of my residence):

B. Workplace Environment

1. Are temperature, noise, ventilation, and lighting levels adequate for maintaining your normal level of job performance? Yes [ ] No [ ]

2. Are all stairs with four or more steps equipped with handrails? Yes [ ] No [ ]

3. Are all circuit breakers and/or fuses in the electrical panel labeled as to intended service? Yes [ ] No [ ]

4. Do circuit breakers clearly indicate if they are in the open or closed position? Yes [ ] No [ ]

5. Is all electrical equipment free of recognized hazards that would cause physical harm (e.g., frayed wires, bare conductors, loose wires, flexible wires running through walls, exposed wires to the ceiling)? Yes [ ] No [ ]

6. Will the building's electrical system permit the grounding of electrical equipment? Yes [ ] No [ ]

7. Are aisles, doorways, and corners free of obstructions to permit visibility and movement? Yes [ ] No [ ]

8. Are file cabinets and storage closets arranged so drawers and doors do not open into walkways? Yes [ ] No [ ]

9. Are chairs free of any loose casters (wheels) and are the rungs and legs of the chairs sturdy? Yes [ ] No [ ]

10. Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard? Yes [ ] No [ ]

11. Is the office space neat, clean, and free of excessive amounts of combustibles? Yes [ ] No [ ]

12. Are the floor surfaces clean, dry, and level, and free of worn or frayed seams? Yes [ ] No [ ]

13. Are carpets well secured to the floor and free of worn or frayed seams? Yes [ ] No [ ]

C. Computer Workstation (if applicable)

14. Is your chair adjustable? Yes [ ] No [ ]

15. Do you know how to adjust your chair? Yes [ ] No [ ]

16. Is your back adequately supported by a backrest? Yes [ ] No [ ]

17. Do your feet reach the floor or are they fully supported by a footrest? Yes [ ] No [ ]

18. Are you satisfied with the placement of your monitor and keyboard? Yes [ ] No [ ]

19. Is it easy to read the text on your screen? Yes [ ] No [ ]

20. Do you need a document holder? Yes [ ] No [ ]

21. Do you have enough leg room at your desk? Yes [ ] No [ ]

22. Is the monitor screen free from noticeable glare? Yes [ ] No [ ]

23. Is the top of the monitor screen eye level? Yes [ ] No [ ]

24. Is there space to rest the arms while not typing? Yes [ ] No [ ]

25. When typing, are your forearms close to parallel with the floor? Yes [ ] No [ ]

26. Are your wrists fairly straight when typing? Yes [ ] No [ ]

Employee's Signature and Date: _____

Approving Official's Signature and Date: _____
Approved [ ] Disapproved [ ]

Approving official and employee retain a copy, and forward a copy to HRD.

This checklist was adapted from the General Services Administration checklist.

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 2780.1B
09/20/88

SUBJECT: THE USE AND MAINTENANCE OF IMPREST FUNDS

Section 1. PURPOSE: This regulation establishes the policies and procedures for the use and replenishment of FLRA Imprest Funds.

Section 2. SCOPE. This regulation applies to all FLRA offices.

Section 3. CANCELLATION. FLRA Regulation 2780.1A, the Use and Maintenance of Imprest Funds, dated January 1, 1985.

Section 4. REFERENCES.

a. Executive Order No. 6166 dated June 10, 1933, as amended.

b. The Act of December 3, 1944, as amended in Title 31, United States Code (U.S.C.), Sections 3321 et seq.

c. Federal Acquisition Regulation (48 C.F.R., Chapter 1, Subpart 13.4, May 1986).

d. The Manual of Procedures and Instructions for Cashiers, Department of the Treasury (Fiscal Service, Bureau of Government Financial Operations, Division of Disbursement, 1976), as amended.

e. Volume 1, Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies, Part 4.

Section 5. DEFINITIONS.

a. Imprest Fund. An Imprest Fund is a cash fund which has been advanced by an official Government disbursing office, without charge to a Government appropria-

DISTRIBUTION: OC, OM, OMM, OE, FSIP, OGC, XD, OCC ALJ, OA, OA/B, OA/F, OA/P, IRRS
OPI: OA

tion or fund account, to a duly authorized Cashier for cash payments for authorized purchases of supplies and services.

b. Cash Held at Personal Risk. Cash held at personal risk means that the appropriate Imprest Fund Cashier is personally accountable for the monies.

c. Cashiers. The Headquarters and Regional Offices have individuals who will be designated as "Class A Cashiers" and/or "Alternate Cashiers".

1. Class A (Principal) Cashiers. Individuals who receive an advance of funds from a disbursing officer for an imprest fund and are personally accountable to the Disbursing Officer and can advance funds to an Alternate Cashier.

2. Alternate Cashier. Individuals who have been designated in the same manner as a Principal Cashier, but who function in such capacity only during the absence of a Principal Cashier or, at the same time as the Principal Cashier if the volume of transactions requires both principal and alternate to act simultaneously. In the latter case, the Principal Cashier retains personal responsibility for all monies and advances monies for the use of the Alternate on the basis of a receipt signed by the Alternate.

Section 6. ESTABLISHMENT OF FUNDS. The Director of Administration will determine the size and location of Imprest Funds.

Section 7. AUTHORITY TO DESIGNATE CASHIERS. The Chief, Budget and Administrative Services Division, will designate officers and employees to serve as Headquarters Cashiers and, upon nomination by the Regional Directors for their respective regions, will designate employees to serve as Cashiers.

Section 8. CASHIER DESIGNATION. In order to designate an individual as a Cashier, the Chief, Budget and Administrative Services Division, signs a prepared Standard Form 211 (SF-211), "Request for Change or Establishment of Imprest Fund" (see Attachment 1). The SF-211 is transmitted to the Disbursing Officer in the Washington Disbursing Center. The signature of the Disbursing Officer on the SF-211 and the form's return to FLRA are sufficient for the designation of Cashiers. Cashiers and Alternate Cashiers must retain a copy of their designation with other imprest fund records.

Section 9. AUTHORIZING OFFICIALS. Because the function of Cashiers is to manage imprest fund disbursements, Cashiers should not authorize disbursements. In compliance with 31 U.S.C. 3325(a)(2), the Office of Administration shall provide to Imprest Fund Cashiers and Alternate Cashiers documentation of FLRA officials who may authorize payments from imprest funds. This should include the printed name and manually written signature of an authorized official.

Section 10. SAFEKEEPING OF IMPREST FUND. Cashiers are not permitted to place official funds in depositories or safe deposit boxes in their own names unless specifically authorized by the Secretary of Treasury. In addition, the security of funds must be maintained by:

a. Keeping funds in a locked cash box in a safe with a combination lock or cabinet with a bar and combination lock;

b. Ensuring that Imprest Funds are under the exclusive control of the Imprest Fund Cashier;

c. Ensuring the existence of only one copy of the safe combination and one duplicate key to the cash box in a sealed envelope that has been signed and dated by the Cashier to be retained in a secure place for use only in an emergency situation by the Director of Administration at FLRA Headquarters Office or the Regional Director at Field locations;

d. Using separate cash boxes when an office simultaneously uses both the Cashier and Alternate Cashier; and

e. Changing the safe combination in the following circumstances:

1. when the Cashier function has been redesignated;

2. when it has been necessary to access the Imprest Fund on an emergency basis;

3. when the combination has otherwise been compromised; or

4. when there is evidence that the combination has been compromised.

Section 11. USE OF FUND.

a. Imprest Funds may be used in accomplishing small purchases in the following circumstances:

1. when vendors prefer to do business on a cash basis to avoid detailed paperwork which they are not equipped to handle or consider costly.

2. when supplies or services are needed at isolated locations and normal purchase operations are not available;

3. when readily available commercial type items are required and can be obtained over the counter with immediate cash payments;

4. when the purchase does not require detailed technical specifications or technical inspection; or

5. when provisions for local credit arrangements and monthly billings by vendors are impracticable.

b. Typical procurements for which the use of Imprest Fund purchases are most suitable are:

1. emergency, fill-in, occasional, or special one-time purchase of an item or service;

2. freight transportation charges on domestic freight shipments moved on commercial bills of lading;

3. purchase of postage stamps and transportation tokens or passes;

4. C.O.D. charges, local transportation charges, and taxi fares; and

5. when specifically authorized, payment of emergency travel advances and travel expenses (a maximum of $500.00 is allowable for any one transaction).

Section 12. LIMITATIONS ON USE OF IMPREST FUND. Imprest funds may not be used for:

a. cashing checks or other negotiable instruments;

b. cash payments for money orders or any type of personal services.

Section 13. IMPREST FUND TRANSACTION REQUIREMENTS AND LIMITATIONS. Imprest funds can be used for cash payments for authorized purchases up to a maximum of $500.00 under emergency conditions or travel advances subject to the following requirements:

a. Authorized Small Purchases. Cashiers and Alternate Cashiers may make payments up to $500.00 for authorized small purchases. At Headquarters, payments from Imprest Funds over $50.00 but less than $100.00 must have additional authorization from the Chief, Budget and Administrative Services Division. Claims exceeding $100.00 must be authorized by the Director of Administration. At Regional locations, claims exceeding $50.00 must be approved by the Regional Director.

b. Tax Exempt Certificates. Although it is recognized that Government purchases are exempt from State and local sales taxes and use taxes as a general rule, statements of exemption from taxes to the vendor on many small cash purchases made with Imprest Funds may be impractical. Therefore, 41 C.F.R. 1-3.604.7 provides that State and local sales and use taxes may be paid at the discretion of the head of the agency or other authorized agency representative if the tax amount is $10.00 or less. When an exemption is required (i.e., taxes in amounts more than $10.00 or when it is practical to claim the tax exemption, Standard Form 1094 (SF-1094), "U.S. Tax Exemption Certificate" (see Attachment 2) should be obtained from the Imprest Fund Cashier and completed prior to the transaction.

c. Authorized Travel Advances. Cashiers and Alternate Cashiers may make payments up to $500.00 for authorized emergency travel advances. In all cases, clearance for such a payment must be obtained from the Chief, Financial Management Division in advance of such payments.

d. Imprest Fund Disbursement Documentation Requirements. Cash payments in the form of advances from imprest funds must be documented appropriately within 3 working days following the advance of funds. Each

cash disbursement from Imprest Funds (advance or reimbursement of cash payment) is serially numbered by the Cashier in the order of payment, beginning with the number "1" at the beginning of each fiscal year. Each numbered disbursement transaction must be supported by the original authorizing documentation, as follows:

1. Local Travel Reimbursement. When reimbursement is requested for local travel (e.g., taxi, bus, subway, parking fees, mileage, etc.) or other expenses (e.g., business related telephone usage, postage, etc.), complete Standard Form 1164 (SF-1164), "Claim for Reimbursement for Expenditures on Official Business" (see Attachment 3). The following additional considerations apply where appropriate:

   - Taxi Fares. Taxi fares are reimbursable in full. The allowance for tip cannot exceed 15 percent of the total fare. Approval for the use of taxi cabs will be accomplished by the approving official signing line 8 of the SF-1164. "Claim for Reimbursement for Expenditures on Official Business" must be completed and a statement included on the form justifying the purpose of the trip and the need for taxis.

   - Parking Fees. Parking fees are reimbursable in full. When parking fees exceed $10.00 per day, a dated receipt must accompany the SF-1164.

   - Mileage Reimbursement. Mileage is reimbursed at the authorized Government rate. Odometer readings that document mileage at the beginning and the conclusion of the

travel should accompany the SF-1164. When odometer readings are not provided, a standard mileage rate from point of departure to point of destination will be computed by the Cashier.

2. Travel Advances. Regular travel will not be paid from Imprest Funds. Travel advances from Imprest Funds are available only for short notice travel, i.e., travel in response to an unexpected program need arising so suddenly that there is insufficient time to follow normal procedures for requesting a Treasury check. To secure an advance of funds for travel expenses, complete and provide the original and one copy of Standard Form 1038 (SF-1038), "Advance of Funds Application and Account" and one completed and signed copy of FLRA Form 83, "Travel Authorization" (see Attachments 4 and 5). In all cases where travel advances are requested from Imprest Funds, the Chief, Financial Management Division, must be contacted for approval before the funds are disbursed and for a Regional Office the appropriate Regional Director must be contacted in addition to the Chief, Financial Management Division If the Chief, Financial Management Division is not available, the Director of Administration can be contacted.

3. Small Purchases. For reimbursement for small purchases or for the request of advances to make small purchases, complete Standard Form 1164. Requests for small purchase reimbursement should also include the original sales receipt, a cash register ticket, or other supporting documentation from the vendor with whom the purchase was actually transacted. If the small purchase was for more than $10.00, supporting documentation should

itemize purchases and be signed by the vendor. If such documentation, either in full or in part, is not available from the vendor, Standard Form 1165 (SF-1165), "Receipt for Cash Subvoucher" (see Attachment 6) must be completed and signed by the employee requesting reimbursement.

e. Unauthorized Purchases. An employee who makes any purchase without the appropriate prior authorization may be liable for the cost of the purchase.

f. Reimbursement or Advances by Other Than Claimants. All cash payment claims for reimbursement or advances from imprest funds must be signed for by the employee due the cash payment. If the request for reimbursement or cash advance is presented by someone other than the employee who is due the cash payment, written authorization in the form of a signed memorandum or a similar statement on the reimbursement or advance documentation from the employee due the cash payment is required (see Attachment 7, Sample Memorandum of Authorization). In addition, the Cashier must have on file the signatures of employees that may authorize another to receive their payments. The signatures of these employees are required on the memorandum of authorization for the transaction to be completed. Once the Cashier has made payment to the authorized individual, the transaction is considered completed and the original employee is accountable for the funds, whether or not the employee subsequently receives the funds. The designation of someone other than the employee due the cash payment to pick up money from the Cashier is not a recommended practice and should only be used when it is not feasible for the claimant to personally complete the transaction with the Imprest Fund

Cashier. To authorize another to receive their payments, employees must appear before the Imprest Fund Cashier in advance and sign an "Authorization for Another Employee to Receive Cash Payments" (see Attachment 8). In all cases, Imprest Fund Cashiers and Alternate Cashiers may request employees to show their Employee Identification Card before funds are disbursed. Employees use this procedure at their own risk.

Section 14. FUND REPORTING AND REPLENISHMENT. The Department of the Treasury's Manual of Procedures and Instructions for Cashiers provides detailed guidance on reporting requirements and fund replenishment. However, it is important to note here that the Cashier maintaining Imprest Funds is required to complete Standard Form 1129 (SF-1129) "Cashier Reimbursement Voucher and/or Accountability Report (see Attachment 9) one time per month. Also, SF 1129 should be submitted whenever there is a change in the amount of the fund (such as an additional advance), or when there is a change of cashiers. Replenishment vouchers will be approved by the Chief, Budget and Administrative Services Division. Alternate Cashiers are required to sign a dated receipt for cash advanced by the Principal Cashier. At the end of each business week, the Alternate Cashier turns over all paid vouchers to the Cashier. The Cashier may then replenish the Alternate Cashier's Funds in the amount of the voucher(s) submitted and will include the Alternate Cashier's disbursement transactions on the monthly SF-1129 report.

Section 15. AUDIT OF IMPREST FUNDS. Imprest funds are subject to periodic audits to determine that all funds are properly accounted for; to make sure that funds are not in excess of cash requirements; to ensure that procedures are being followed; and to verify that Cashiers or Alternate Cashiers are using funds as authorized by law and regulation.

a. General Audit Guidelines.

1. Audits of Imprest Funds shall be conducted at least once in each calendar quarter.

2. Advance notice of planned audit may be given or the audit may be unannounced.

3. Cashiers and Alternate Cashiers shall be present during the conduct of any audits of funds for which they are responsible.

4. Persons authorized to conduct audits shall be accompanied by at least one other supervisory or management official of FLRA who is not responsible for management of an Imprest Fund.

b. Individuals Responsible for Performing Audits. Individuals who may conduct audits of Imprest Funds include authorized representatives of FLRA who are management officials with the Office of Administration; Executive Director, the Regional Directors for their respective Regions; the Chief Disbursing Officer, Department of the Treasury; and the General Accounting Office.

c. Internal Audits.

1. Internal audits performed by staff of the Office of Administration take the form of a cash verification using, "Verification of Imprest Cash," (see Attachment 10), following general guidelines as stated in paragraph 15a. On completion of internal audits, copies of the report should be made available to the Director of Administration and the Cashier or Alternate Cashier of the fund audited.

2. The Director of Administration is responsible for assuring that the requirement for periodic audits during the course of the fiscal year is met for each office in which a Cashier or Alternate Cashier is located.

d. External Audits.

1. Chief Disbursing Officer or his/her designee may make inspections of Cashier and Alternate Cashier accounts when deemed necessary.

2. General Accounting Office. The General Accounting Office (GAO) may make such audits of imprest funds as required by law and regulation.

e. Irregularities, Loss, or Theft of Imprest Funds. If an audit or a cash theft of verification shows a major loss of funds or irregularities in the management funds, the Director of Administration is responsible for immediately reporting the loss and/or irregularities to the United States Secret Service, the Federal Bureau of Investigation; the Executive Director, FLRA; and the Disbursing Officer, Department of the Treasury. Small losses or shortages which might reasonably be the result of errors in making change need not be reported to the Secret Service or FBI, if there is no indication of irregularity or improper action. In the event of obvious theft, the local police will also be contacted.

Section 16. IMPREST FUND TRANSFER.

a. The process of transferring an Imprest Fund involves the following steps when the outgoing and incoming Cashier are both available to complete the transfer.

1. The outgoing Cashier recalls any advances that have been made to the Alternate Cashier.

2. Imprest Funds are counted and verified by the Imprest Fund Cashier in the presence of the management official, in the office where the Imprest Fund is located, and the incoming Imprest Fund Cashier.

3. The "Status of Funds" section of Standard Form 1129, "Cashier Reimbursement Voucher and/or Accountability Report" (see Attachment 11) is prepared and signed by the outgoing Cashier to record the cash verification. The outgoing cashier adds the following statement in the certification section: " . . . and has been transferred to (name of incoming Cashier) as of this date".

4. The incoming Cashier acknowledges receipt of funds from the outgoing Cashier by inserting and signing the following statement on the SF-1129: "I hereby accept accountability for this Imprest Fund of (dollar amount)."

5. The management official witnessing the transfer of funds from outgoing to incoming Imprest Fund Cashier signs the SF-1129.

6. The original and one copy, both signed as required, are submitted to the Disbursing Officer, Department of the Treasury from whom funds were advanced. A copy should be forwarded to the Office of Administration and a copy should be retained by the incoming Cashier.

b. In the absence of the outgoing Cashier, the Director of Administration will arrange for the management official responsible for the office in which the Imprest Fund is to be located, the incoming Cashier, and one other employee not involved in the management of an

Imprest Fund, to access Imprest Fund records and follow the procedures for transfer of funds as stated above and as outlined in the Manual of Procedures and Instructions for Cashiers. (NOTE: The required safekeeping requirements described in Section 10 should be followed whenever the transfer of an Imprest Fund occurs.)

Section 17. ASSISTANCE. General information and assistance regarding use of Imprest Funds may be obtained by contacting the Chief, Budget and Administrative Services Division. Imprest Fund Cashiers and Alternate Cashiers with questions relating to the maintenance of Imprest Funds may also contact the Disbursing Officer, Department of the Treasury, directly.

This regulation is effective September 20, 1988.

Clyde B. Blandford, Jr.
Acting Executive Director

ATTACHMENT 1

REQUEST FOR CHANGE OR ESTABLISHMENT OF IMPREST FUND

SECTION I – IDENTIFICATION OF DISBURSING OFFICER AND CASHIER

NAME AND LOCATION OF DISBURSING OFFICER:

NAME OF CASHIER: **Juanita Luna**

AGENCY: **Federal Labor Relations Authority**

ADDRESS: **350 South Figueroa Street, RM 370**
Los Angeles, CA 90071

PHONE NO. **(213) 894-3805**

SECTION II – ACTION REQUESTED

EFFECTIVE DATE: **June 15, 1988**

Designation [X] Change to Alternate [ ] Increase Advance [ ] Liquidation [ ]
Revocation [ ] Change to Principal [ ] Decrease Advance [ ] Address Change [ ]
Class Change [ ] Other (Explain) [ ]

SECTION III – DESIGNATION INFORMATION

Class and Type of Cashier *(If Alternate – show name of Principal)*

Principal A Cashier

SECTION IV – INCREASE OR NEW ADVANCE

Current Balance . . . . . $ **-0-**

Increase or New Advance Requested . . . . . $ **250.00**

Total . . . . . $ **250.00**

Number and Denomination of Checks Requested:

Fund Transferred from:

SECTION V – DECREASE OR LIQUIDATION OF FUNDS

Current Balance . . . . . $

Apply the following:

Reimbursement Voucher Nos:

$

Uncashed Treasury Check Nos:

Deposit Ticket Nos:

Net Balance for Which Cashier is Accountable . . . . . $

Date	Signature *(Head of Agency or Designee)*	Title
5-27-88	S Swaim	**Chief, BASD**

SECTION VI – DESIGNATION (to be completed by Disbursing Officer)

In accordance with the provisions of paragraph 2 of section 4 of Executive Order 6166 of June 10, 1933, as amended, the function of disbursing in connection with the operations of the agency named is hereby delegated to the above-named employee effective on the date indicated below. Class D Cashiers may use their funds for change making only. Class A and B cashiers may make payments in cash in accordance with the Treasury Fiscal Requirements Manual (I TFRM 4-3000), and such other payments as may be listed on the attached schedule.

6/15/88
(Effective Date of Designation)

(Disbursing Officer or Designee)

MANAGER, ADMIN. MANAGEMENT BRANCH 6/08/88
(Date – month, day, and year)

SECTION VII – CHECK ISSUANCE AUTHORIZATION (to be completed by Disbursing Officer)

DRAW CHECKS AS INDICATED ABOVE

DATE CHECKS _____

(Disbursing Officer or Designee)

CHECK NOS. _____ TO _____

(Date – month, day, and year)

U.S. TAX EXEMPTION CERTIFICATE	Read the instructions on the reverse side.	DEPARTMENT, AGENCY, OR OFFICE	SERIAL NO.
ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT *(Describe)*			QUANTITY / UNIT PRICE $

VENDOR FROM WHICH PURCHASED	NAME / ADDRESS *(No., Street, City, State, and ZIP Code)*	A tax exemption certificate has not previously been issued and the described items have (have) been delivered and invoiced pursuant to:	Amount of Tax Excluded: State $ / Local $

I certify that the information on this form is true and correct to the best of my knowledge and belief.

PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▶ DATE

P.O. OR CONTRACT NO.

DATES

For Administrative Office

D.O. SYMBOL NO.

VOUCHER NO.

Certified correct and just:

SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▶ DATE

DATE

STANDARD FORM 1094 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

53-804

INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

2. This form shall NOT be used for:
(a) Purchases of quarters or subsistence made by employees in travel status.
(b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
(c) Merchandise purchased which is subject only to Federal Tax.

3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.

4. If both State and Local taxes are involved, use a separate form for each tax. The certificate will be provided to the vendor when the prices exclude State or Local tax.

5. The serial number of each certificate prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS CERTIFICATE FOR THE PURPOSE OF OBTAINING EXEMPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED. ☜

STANDARD FORM 1094 BACK (REV. 10-83)

Attachment 3

CLAIM FOR REIMBURSEMENT FOR EXPENDITURES ON OFFICIAL BUSINESS

1. DEPARTMENT OR ESTABLISHMENT, BUREAU, DIVISION OR OFFICE

2. VOUCHER NUMBER

3. SCHEDULE NUMBER

Read the Privacy Act Statement on the back of this form.

5. PAID BY

a. NAME *(Last, first, middle intial)*

b. SOCIAL SECURITY NO.

c. MAILING ADDRESS *(Include ZIP Code)*

d. OFFICE TELEPHONE NUMBER

C

6. EXPENDITURES *(If fare claimed in col. (g) exceeds charge for one person, show in col. (h) the number of additional persons which accompanied the claimant.)*

DATE 19__ (a)	CODE (b) *Show appropriate code in col. (b): A—Local travel B—Telephone or telegraph, or C—Other Expenses (itemized)*	(Explain expenditures in specific detail.) (c) FROM	(d) TO	MILEAGE RATE ¢ NO. OF MILES (e)	AMOUNT CLAIMED MILEAGE (f)	FARE OR TOLL (g)	ADD. PERSONS (h)	TIPS AND MISCELLANEOUS (i)
If additional space is required continue on the back.			SUBTOTALS CARRIED FORWARD FROM THE BACK					
			TOTALS					

7. AMOUNT CLAIMED *(Total of cols. (f), (g) and (i).)* ▶ $

8. This claim is approved. Long distance telephone calls, if shown, are certified as necessary in the interest of the Government. *(Note: If long distance calls are included, the approving official must have been authorized, in writing, by the head of the department or agency to so certify (31 U.S.C. 680a).)*

Sign Original Only

APPROVING OFFICIAL SIGN HERE ▶ DATE

9. This claim is certified correct and proper for payment.

Sign Original Only

AUTHORIZED CERTIFYING OFFICER SIGN HERE ▶ DATE

10. I certify that this claim is true and correct to the best of my knowledge and belief and that payment or credit has not been received by me.

Sign Original Only

CLAIMANT SIGN HERE ▶ DATE

11. CASH PAYMENT RECEIPT

a. PAYEE *(Signature)*

b. DATE RECEIVED

c. AMOUNT $

12. PAYMENT MADE BY CHECK NO.

ACCOUNTING CLASSIFICATION

Attachment 4

ADVANCE OF FUNDS APPLICATION AND ACCOUNT

1 TYPE OF ADVANCE: ☐ CASH ☐ CHECK

2 TYPE OF TRAVEL: ☐ TEMPORARY ☐ PERMANENT

3. NAME (*Last, first, middle initial*)

4. ACCOUNT NO.

5. TELEPHONE NUMBER(S)

6. SOCIAL SECURITY ACCOUNT NO.

In compliance with Privacy Act of 1974 the following information is provided: Solicitation of the information on this form is authorized by 5 U.S.C. Chapter 57 implemented by the Federal Travel Regulations (FPMR 101-7), E.O. 11609 of July 22, 1971, E.O. 11012 March 27, 1962, and E.O. 9397 of November 22, 1943. The primary purpose of the information is to facilitate the review, approval, accounting, and advancement of funds for travel and certain relocation allowance expenses to be incurred under appropriate administrative authorization. The requested information will be used by officers and employees of this agency who have a need for such information in the performance of their official duties. The information will be disclosed to appropriate Federal, State, local or foreign agencies, when relevant to civil, criminal, or regulatory investigations or prosecutions, or when pursuant to a requirement by this agency in connection with the hiring or firing of an employee, security clearances, or other investigations of the performance of official duty while in Government service. Your Social Security Number (SSN) is solicited for use as an employee identification number. Disclosure of the requested information is voluntary, however, failure to provide the information required may result in delay or suspension of your advance of funds request.

7. DEPARTMENT OR ESTABLISHMENT

8. BUREAU, DIVISION OR OFFICE

9. **APPLICATION** — *(For completion by applicant)*

An advance of funds is hereby requested for travel and other expenses to be incurred by me.

a. UNDER AUTHORIZATION NUMBER

b. DATE OF AUTHORIZATION

c. TRAVEL PERIOD *From* *To*

d. MAIL CHECK TO ☐ OFFICE ☐ RESIDENCE
(Give address — number, street, city, State, ZIP code)

e. BALANCE DUE U.S. FROM PREVIOUS ADVANCE $

f. AMOUNT HEREIN APPLIED FOR $

g. TOTAL $

Note: Outstanding advances not fully recovered by deductions from reimbursement vouchers must be promptly repaid. When travel is canceled or indefinitely postponed, the full amount of any outstanding advance shall be repaid immediately.

APPLICANT SIGN HERE

DATE

10. APPROVAL

SIGNATURE AND TITLE OF APPROVING OFFICIAL

DATE APPROVED

11. APPROPRIATION TO BE CHARGED

12 REMARKS

13. CASH PAYMENT RECEIVED

DATE

1038-108

STANDARD FORM 1038 (REV. 10-77)
Prescribed by GSA, FPMR (41 CFR) 101-7

Standard Form 1038
Advance of Funds Application and Account

Attachment 5

FEDERAL LABOR RELATIONS AUTHORITY

TRAVEL ORDER AND ITINERARY

1. Office	2. Official Station	3. Travel Order No.	4. Date *(Month, Day, Year)*

5. Name and Title of Traveler	6. Address of Traveler *(Street No., City, State, Zip Code)*

You are authorized to travel as indicated below and incur necessary expenses in accordance with FPMR 101-7 and FLRA Regulations.

7. Purpose

8. Itinerary

9. Begin on or about	10. End on or about	11.
		☐ Per Diem Allowance _____ ☐ Actual Expenses NTE _____

12. Change of Official Station: (This transfer is not made primarily for the convenience or benefit of the employee). Check all applicable boxes.

- ☐ Transportation of immediate family.
- ☐ Transportation and temporary storage of household goods and personal effects.
- ☐ Round trip travel for _____ days to seek permanent residence.
- ☐ Temporary quarters at: Old station _____ days.
  New station _____ days.
  (Identify family members by name, age, and relationship in Remarks Section)
- ☐ Sale of residence at old official station.
- ☐ Purchase of residence at new official station.
- ☐ Miscellaneous expenses.

13. Mode of Transportation

- ☐ Common Carrier *(First Class)* Attach Agency Head's Approval
- ☐ Common Carrier *(Less than First Class)*
- ☐ GSA Car
- ☐ Taxis *(Other than to and from carrier terminal)*
- ☐ Government Contract Rental
- ☐ Commercial Auto Rental Specifically Approved
- ☐ Privately Owned Automobile
  - ☐ At _____ per mile *(Personal convenience - limited to constructive cost)*
  - ☐ At _____ per mile *(Administratively determined to be more advantageous to the government (see FLRA Regulations))*
- ☐ Miscellaneous Expenses *(Specify)*

14.	Estimated Cost	Remarks
Accounting Code		
Per Diem		
Transportation		
1. Teleticketing		
2. GTR		
3. POV		
4. Other *(Specify)*		
Miscel. *(Specify)*		I certify that travel herein was reviewed and determined to be essential for the accomplishment of the FLRA's program and missions.
TOTAL ►		

Cost Center	Signature and Title	Date

FLRA Form 83
March 1980

Attachment 6

[redacted]

INTERIM RECEIPT FOR CASH

DATE _____

Received of Imprest Fund Cashier $_____ for which I hold myself accountable to the United States.

_____
(Signature)

NOTE TO CASHIER

Be sure this receipt is marked "VOID" and returned to you when the transaction is completed or the funds returned to the Cashier.

* GPO : 1981 O - 335-791

Standard Form 1165
7 GAO 9100
1165-105

RECEIPT FOR CASH—SUBVOUCHER

(To be used when invoice is not available)

[redacted]

Subvoucher No. _____

Date _____

Received in cash from _____

_____ and _____/100 ($_____) for the following:

QUANTITY	ARTICLES OR SERVICES	AMOUNT

Vendor _____

Address _____

_____

By _____
(Signature of Vendor/Agent)

Title _____
(DO NOT SIGN IN DUPLICATE)

PURPOSE (*Project, etc.*)

APPROPRIATION AND ACCOUNTING CLASSIFICATION

Attachment 7

Sample Memorandum of Authorization

United States Government
MEMORANDUM

To (Name) Date
Imprest Fund Cashier

From (Name of Employee Due Cash Payment from Imprest Fund)
(Office)

Subject Authorization for (Name) to Claim Cash Payment from the Imprest Fund on My Behalf

With this Memorandum, I authorize _____
(Name)
to receive the cash payment due to me from the Imprest Fund.

_____
(Signature)

Attachment 8

Sample Authorization for Another Employee to Receive Cash Payments

United States Government
MEMORANDUM

To: (Name) Date
(Imprest Fund Cashier)

From: (Name of Employee Due Cash Payment from Imprest Fund)
(Office)

Subject: Authorization for Another Employee to Receive Cash Payments

My signature on this Memorandum authorizing another employee to receive cash payment due me from the Imprest Fund is sufficient to authorize the specified employee to receive funds due me. I understand that, once the cashier has made payment to the authorized individual, the transaction is considered complete and I am accountable for the funds, whether or not I subsequently receive them or not.

This authorization will remain valid until the earlier of the following--

1) I appear personally before the Imprest Fund Cashier and rescind this document; or

2) I cease to become an employee of the Federal Labor Relations Authority.

_____ _____
(Signature) (Date)

ATTACHMENT 9

Standard Form 1129
GAO
1129-

ATTACH SUBVOUCHERS HERE

REIMBURSEMENT VOUCHER

Voucher No. 8-4799

Schedule No. 8I3096

PAID BY

U.S. FEDERAL LABOR RELATION AUTHORITY
(Department, bureau, or establishment)

Payee's name Leon Russell 578-64-7191

Mailing address 500 C St S.W.

Washington D.C. 20424

For payments made on account of official business as per attached subvouchers numbers 88-127 to 88-172, inclusive, for the period May 5, 1988, to June 3, 1988, and reclaimed subvouchers numbers →

AMOUNT	
DOLLARS	CENTS

STATUS OF FUND	DOLLARS	CENTS
This Voucher Sub-46	580	97
Unpaid Reimbursement Voucher Dated		
Unscheduled Subvouchers		
Interim Receipts for Cash		
Cash on Hand	19	03
Total	600	00

Differences

Amount verified; correct for

(Signature or initials)

(For Administrative Use)

Approved: S Broadus

I certify that the disbursements claimed herein are correct and proper, that payment has not been received, and that the status of the fund for which I am accountable is as stated above.

6/3/88 (Date) Leon Russell (Cashier)

Title Principal Cashier

Number of reimbursement checks desired 1

in the amounts of 580.97

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date) Authorized Certifying Officer.

ACCOUNTING CLASSIFICATION

Paid by Check(s) No.(s)

Paid by cash, $..... on .....
(Date)

ATTACHMENT 10 - VERIFICATION OF IMPREST CASH

(DATE)

TO: Mark A. Aglio
Comptroller

FROM: John Smith
Jane Jones
Imprest Fund Verifiers

SUBJECT: Quarterly Verification of Imprest Fund

We the undersigned today verified the imprest fund maintained by Principal Imprest Fund Cashier, Jane Doe, as detailed below:

1.	Authorized amount of fund:	$ 600.00
2.	Cash on Hand:	$ 220.50
3.	Interim receipts for cash	$ 50.00
4.	Unscheduled subvouchers:	$ -
5.	Unreimbursed reimbursement voucher	$ 329.50
6.	Uncashed reimbursement checks:	$ -
7.	TOTAL (lines 2 through 6)	$ 600.00

DIFFERENCE (line 1 minus 7) $ -

EXPLANATION OF DIFFERENCE:

(NOTE: Report all irregularities immediately to the servicing administrative accounting officer and the Comptroller.)

Working papers are attached

Attachment

SIGNED: John Smith
John Smith, Verifier

Jane Jones
Jane Jones, Verifier

cc: Jane Doe, Principal Cashier

Attachment 11

Standard Form 1129
7 GAO 5(4)
1129-104

ATTACH SUBVOUCHERS HERE

REIMBURSEMENT VOUCHER

Voucher No.....

Schedule No.....

PAID BY

Federal Labor Relations Authority
(Department, bureau, or establishment)

Payee's name BerNadette G. DeLaney

Mailing address Federal Labor Relations Authority
500 C Street, SW
Washington, D.C. 20424

For payments made on account of official business as per attached subvouchers numbers .....
to ....., inclusive, for the period ....., 19....., to ....., 19.....,
and reclaimed subvouchers numbers .....→

AMOUNT	
DOLLARS	CENTS

STATUS OF FUND	DOLLARS	CENTS
This Voucher		
Unpaid Reimbursement Voucher Dated		
Unscheduled Subvouchers		
Interim Receipts for Cash		
Cash on Hand		
Total		

Differences .....

Amount verified; correct for .....

(Signature or initials) .....

(For Administrative Use)

Approved: Mark A. Aglio
Mark A. Aglio
Comptroller

I certify that the disbursements claimed herein are correct and [illegible] status of funds, and for which I am accountable, is as stated above.

Funds have been transferred to Leonard J. Siegel as on Sept. 1, 1984 BerNadette G. DeLaney
(Date) (Cashier)

Title (Outgoing) Principal Cashier

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

Number of reimbursement checks desired .....

in the amounts of .....

....
(Date) *Authorized Certifying Officer.*

ACCOUNTING CLASSIFICATION

I hereby accept responsibility for funds in the amount of $600.00 Leonard J. Siegel
Leonard J. Siegel

Witness: S Besachio
SAM BESACHIO

Check(s) No.(s)

Paid by cash, $..... on .....
(Date)

Payee .....

GPO 663-16-79444-1 ST1-844

Federal Labor Relations Authority

Washington, D.C.

GENERAL AND ADMINISTRATIVE POLICY INSTRUCTION
FLRA No. 1501.3

GOVERNMENT CONTRACTOR-ISSUED TRAVEL CHARGE CARDS

Issue Date: March 20, 2015

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A. Conclusions

B. Effective Date

0101. POLICY and PURPOSE.

101.1 General.

The Travel and Transportation Reform Act of 1998 (TTRA)[1] stipulates that the government-sponsored, contractor-issued travel card ("travel card") shall be used by U.S. Government personnel to pay for most expenses incident to official business travel. Provisions governing this mandatory use requirement within the Federal Labor Relations Authority (FLRA) are set forth in this policy.

101.2 Purpose.

Use of a travel card reduces administrative costs, provides a more efficient means of obtaining travel services, and reduces the cash burden on employees who undertake official government travel. Within the FLRA, the travel card program is intended to facilitate and standardize for FLRA travelers the use of an effective, convenient, and commercially available method to pay for expenses incident to official travel. This policy instruction provides agency policy and guidance to FLRA employees on the use of the government contractor-issued travel card.

101.3 Applicability and Scope.

This policy instruction is applicable to all FLRA employees, unless otherwise exempted. This policy instruction is issued to advise all FLRA travel cardholders of the proper and improper uses of the travel card, their responsibility for timely payments to the card-issuer, and the potential consequences for not making timely payments or for improper use of the travel card.

101.4 Cancellation.
This policy instruction cancels and supersedes any prior or current FLRA policies as it relates to the specific guidance/topic(s) addressed in this instruction.

101.5 Definitions.

a. **National Travel, Inc.** is the FLRA travel management center.

b. **Citibank card.** The FLRA contractor-issued travel card.

c. **CONCUR Government Edition (CGE)**. The end-to-end, web-based travel and expense management tool FLRA employees use to make travel reservations, authorize travel, create travel vouchers, and approve travel vouchers.

d. **Frequent Traveler**. An FLRA employee who routinely travels at least twice per fiscal year.

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1 *See* Pub. L. No. 105-264 (codified at 5 U.S.C. § 5701).

101.6 Approval Authority/Delegations.
The guidance as set forth in this policy instruction shall not be re-delegated or reinterpreted for specific component use except as the FLRA Chairman expressly delegates or otherwise provides, in writing.

0102. RESPONSIBILITIES.

102.1 General Service Administration.
In accordance with the TTRA, the General Service Administration (GSA) published implementing regulations regarding the required use of the travel charge card, class of expenses that are exempted, collection of amounts, and reimbursement of travel expenses.[2] The GSA awards and administers a master contract for the Government travel card program, which is part of the "GSA SmartPay Program." Here is a link to the master contract.

https://smartpay.gsa.gov/sites/default/files/pub/SmartPay2_MasterContract_R25-a9Y_0Z5RDZ-i34K-pR-2.pdf

102.2 FLRA Chairman.
The FLRA Chairman is responsible for granting exemptions from the mandatory use of the Government contractor-issued travel charge card.[3]

102.3 Executive Director.
The Executive Director is responsible for the establishment, distribution, and agency-wide implementation of this policy instruction, including training and internal controls.

102.4 Administrative Services Division (ASD).
The Director, ASD is the designated program manager for the travel card. As such, ASD is responsible for managing the FLRA travel card program in compliance with this policy instruction, including, but not limited to overseeing the work of the Travel Program Coordinator; advising the Executive Director of changes in law, rule, or regulations related to the government-wide travel program; routinely reviewing the payment aging report; notifying delinquent cardholders and their supervisors of past due accounts or inappropriate usage; and related issues as required, including instituting or overseeing delinquency management actions.

102.5 Human Resources Division (HRD)
The HRD provides advice to managers and supervisors in dealing with cases of subordinate employee negligence or misuse of the travel card. The HRD will provide advice and guidance prior to counseling employees and before taking any disciplinary action.

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[2] *See* 41 C.F.R. parts 301-51, 301-52, 301-54, 301-70, and 301-76.
[3] *See* Id. at § 301-51.3.

HRD and ASD shall coordinate to implement any actions to collect undisputed delinquent amounts incurred on the FLRA employee's individually billed travel card from an employee's pay.

102.6 Travel Program Coordinator.

The Travel Program Coordinator is responsible for managing the day-to-day operations of the FLRA Travel Card Program, including, but not limited to:

a. Initial review and approval of all travel card applications prior to submission to FLRA's travel card contractor, Citibank;

b. Maintaining an up-to-date list of all current cardholders and accounts to include information such as account names, account numbers, addresses, and telephone numbers;

c. Notifying the card contractor of any changes in organization structure that affect the travel card program;

d. Providing updates and training to FLRA individual cardholders, administrative staff, and others;

e. Routinely reviewing charges made against the FLRA's individually billed travel cards, ATM withdrawals, and the payment aging report;

f. Referring questionable charges to the individual cardholder for explanation or to the Director, ASD, for follow-up with the individual cardholder's supervisor or travel approving official for further action, as appropriate;

g. Cancellation of cards; and

h. Collection of cards at time of separation.

102.7 FLRA Program Managers and Supervisors.

FLRA managers and supervisors are responsible for program execution and compliance with the policy instruction for their employees and for themselves. FLRA managers and supervisors are required to counsel employees when informed about travel card misuse and delinquency and to initiate disciplinary action as appropriate. To ensure that managers and supervisors are aware of the options available for correcting travel card related misconduct, they must contact the HRD for assistance on a case-by-case basis before counseling employees or initiating disciplinary action. The appropriate disciplinary measure will depend on the specific facts related to the case. If an employee is unable to travel because his or her travel card has been suspended or revoked and travel is a condition of employment, the manager or supervisor may be required to initiate action to reassign, demote, or remove the employee from Federal service.

Because of the impact of travel card misuse and delinquency, a Table of Penalties is provided at section 105.1.E. to serve as a guide for administering discipline and to

promote consistency of action across the agency.

102.8 FLRA Travel Cardholders.

FLRA travel cardholders shall adhere to the procedures set forth in this policy instruction. By accepting a travel card, individual FLRA travel cardholders agree to use the travel card only for official travel-related expenses and are prohibited from using the card for personal, family, household purposes; or for charges for anyone other than the individual cardholder. Individual FLRA travel cardholders are personally responsible for payment in full of the undisputed amounts due in the monthly billing statement from the card contractor.

FLRA travel cardholders are covered by the Standards of Ethical Conduct Regulations and relevant Executive Orders directing them, in good faith, to satisfy financial obligations, since public service is a public trust.[4] Therefore, any violation of the cardholder agreement, whether for misuse or delinquency (more than 60 days past due) will subject the travel cardholder to disciplinary action and/or the suspension or cancellation of the travel card. The Table of Penalties at section 105.1E. establishes a range of appropriate penalties that may be used for travel card misuse or delinquency. Travel card delinquency or misuse will result in progressively severe disciplinary actions. These actions may range from official reprimands to removal from Federal service, depending on the specific circumstances involved. In certain cases, the agency may also refer a case to the Department of Justice for criminal prosecution.

0103. MANDATORY USE OF THE TRAVEL CARD.

103.1 Policy.

All FLRA employees who travel on official business twice or more during a fiscal year shall be required to use the government-sponsored, contractor-issued travel charge card for all expenses arising from official government travel, unless otherwise exempted. Even for an expense requiring use of the travel card, failure to use it may not be a basis for the FLRA to refuse to reimburse the traveler for an otherwise appropriate charge. However, there would be no guarantee of reimbursement for additional costs arising from the failure to use the travel card (e.g., higher airfares, rental car charges, or hotel rates). In addition, employees are reminded that the practice of using a personal charge card instead of the government travel card for government travel without prior authorization by the supervisor or as guided by the travel regulations is prohibited under the TTRA and may subject the employee to appropriate administrative or disciplinary action.

See the Code of Federal Regulations (CFR) Federal Travel Regulations (FTR), CFR §301-51 for additional information regarding the mandatory use of travel cards (and approved exemptions).

FLRA contractors are not authorized to use government travel cards.

[4] *See* C.F.R. Part 2635; Executive Order 12731(K)(1).

103.2 Government-Wide and FLRA-Wide Exemptions.

A. Personnel Exempted.

1. GSA has exempted the following classes of personnel from mandatory use of the travel charge card:
   a. Employees who have an application pending for the travel charge card;
   b. Individuals traveling on invitational travel orders; and
   c. New appointees.

2. In addition to the government-wide GSA exemptions, the following classes of personnel are exempt from mandatory use of the card throughout the FLRA:
   a. Presidential appointees to the FLRA Federal Service Impasses Panel;
   b. Presidential appointees to the FLRA Authority decisional component;
   c. Presidential appointees to the FLRA Office of the General Counsel;
   d. Schedule "C" appointees;
   e. Individuals employed or appointed on a temporary or intermittent basis upon a determination by the individual's supervisor or other appropriate official that the duration of the employment or appointment or other circumstances pertaining to such employment or appointment does not justify issuance of a travel charge card to such individual;
   f. Such FLRA employees as are determined to be infrequent travelers. An infrequent traveler is one who travels fewer than two times during a fiscal year;
   g. FLRA employees who are denied travel charge cards or whose travel charge cards have been canceled or suspended for financial irresponsibility or for other specific reasons; and
   h. Other employees who, in the determination of the FLRA Chairman, should be exempted from the mandatory use of the travel card.

B. Classes of Expenses Exempted.

The GSA has exempted the following classes of expenses from the mandatory use of the travel charge card. Therefore, the FLRA cardholder employee does not have to use the travel card for the following classes of expense:

1. Expenses incurred at a vendor that does not accept the contractor-issued travel charge card;
2. Laundry/dry cleaning;
3. Parking;
4. Local transportation system fares;
5. Taxi fares;

6. Tips;
7. Meal charges when use of the card is impractical (e.g., group meals or when the dining establishment does not accept credit cards);
8. Telephone calls (when a government calling card is available for use); and
9. Relocation allowances (prescribed in Ch. 302 of the FTR), except en route travel and house-hunting trip expenses.

C. Other Exemptions.
The FLRA Chairman may exempt any individual person or specific expense (i.e., a specific occurrence of an expense relating to a particular traveler or a single episode of travel) from the mandatory use requirements of the TTRA.

D. Notifications of Exemptions.
Following the granting of an exemption covered by 103.2.C, the FLRA Chairman (or the Chairman's designee) shall, in accordance with statutory requirements and regulations promulgated by the Administrator for General Services, prepare and submit the following notification(s), as appropriate:

Not later than 30 days after granting an exemption for a type or class of individual or a type or class of expense, or granting an exemption to any individual person or specific expense, covered by 103.2.C, above, notify the Administrator of General Services in writing of the granting of such an exemption.

Notifications shall state the reason for the exemption and be submitted directly to:

Administrator of General Services
Attention: MTT
1800 F Street, NW
Washington, D.C. 20405

E. Payment Methods Authorized When Exempted.
When an exemption is granted from the mandatory use of the travel charge card, one or a combination of the following may be authorized for payment of travel expenses.
1. Personal funds, including cash or a personal charge card;
2. Travel advances; or
3. Centrally billed account for airline, bus, or rail ticket expenses.

0104. NON-MANDATORY USE OF THE TRAVEL CARD.

104.1 Voluntary Card Use.
An individual granted an exemption from mandatory use of the travel card may receive and use a travel card on a voluntary basis.

104.2 Local Travel.
The travel card may be used for local travel expenses (i.e., local transportation

system fares, such as parking and tolls), but such use is not required under the TTRA.

0105. MANAGEMENT CONTROLS.

105.1 Types of Travel Card.
The FLRA Travel Card Program includes two types of travel cards:

1) Individually Billed Accounts (IBA)
2) Centrally Billed Accounts (CBA).

A. Individually billed accounts (IBA).
An IBA is an account for which a travel card is issued to an individual employee. The cardholder receives the billing statement directly from the contractor at the address provided on the card application. The cardholder is responsible for notifying the Travel Program Coordinator and the card contractor of changes in contact information, such as a new address. The cardholder is responsible for on-time payment in full of the amount stated on the monthly billing statement, unless properly disputed. The cardholder is accountable for misuse of the card.

1. Training.
New travel card applicants will be required to complete a training module on the use of, and responsibilities associated with, the travel card. In addition, all travel card program participants are required to complete the same training module at least once every three years. The module is available online at: https://training.smartpay.gsa.gov/training/travel-card-cardholders. New travel card applicants are required to print a copy of the Certificate of Training Completion and include the document in their application packages. Specifically, each trainee must certify that he/she received the training, understands the regulations and procedures, and knows the consequences of inappropriate actions. Copies of the certifications must be retained by the Travel Program Coordinator.

2. Obtaining an Individual Travel Card.
Unless an employee is otherwise eligible for an exemption, as listed in section 103.2, any FLRA employee who is expected to travel two or more times in a fiscal year shall submit a signed Citibank Government Travel Card Setup Form to the FLRA Travel Program Coordinator. In no case shall an employee contact the contractor (Citibank) directly to obtain a travel card. In no case shall a standard travel card be issued to an employee who refuses a credit check.

Travel cardholders are responsible for complying with the terms and conditions of the cardholder account agreement that each employee signs prior to receiving the card. Upon receipt of a properly completed application, the card contractor shall send the travel card and a Government Card Services Travel Program Cardholder Account Agreement[5] to the individual travel cardholder at his/her stated address or as directed by the

Travel Program Coordinator. By activating, signing or using the travel card, the cardholder agrees to be bound to the terms of the agreement to the extent that the cardholder uses the travel card. The card contractor shall send PIN numbers associated with the ATM option separately from the travel card.

3. Credit Worthiness Assessment.
Before issuing a standard travel card to a first-time applicant the FLRA must obtain a credit score for the applicant. The credit score obtained must be 660 or higher. Examples of acceptable credit scores are FICO (Fair Isaac Corporation) or a Beacon score (Equifax Credit Bureau). Credit scores obtained during any other process of background clearance that are less than 12 months old may also be used.

For first-time applicants with a credit score of less than 660, the FLRA may issue a travel card, but with greater restrictions than the standard travel card. The restrictions shall be in one or more of the following areas: overall dollar limit, individual transaction amounts, transaction types, length of time the card remains active, ATM usage, or other restrictions.

If it is not possible to obtain a credit score, then the FLRA may still issue a restricted (as described above) travel card to a first-time applicant but it shall conduct an alternative credit worthiness assessment. Specifically, the FLRA shall review the applicant's most recent Standard Form (SF) 85P, Section 22, Questionnaire for Public Trust Positions, or SF 86, Section 27, or use a similar vehicle containing the same types of questions as in the forms and sections noted and use the information provided to assess credit worthiness. In either case the vehicle used shall not be older than one year.

4. Use of CGE and Official Travel Expenses.
Cardholders must use CGE to book official travel via airfare, bus, rail, and rental car and to book lodging. Cardholders must charge the following expenses to their travel card:

a. Airfare, bus, rail, rental car expenses
b. Lodging
c. Meals, unless impracticable (see section 103.2 B.7)
d. Printing, faxing, and computer services related to official duties

[5] *See* Government Services Travel Card Program Cardholder Account Agreement. *Citibank* provides this agreement to each cardholder with the travel card. A copy of the agreement is on file with the FLRA Travel Program Coordinator.

5. Automated Teller Machine (ATM) Access.
Cardholders may use the travel card at a specified network of ATMs to obtain cash needed to pay for "out-of-pocket" travel-related expenses. The card contractor will assign a personal identification number (PIN) to each cardholder, together with card issuance to permit ATM access. ATM cash advances must be solely for official FLRA business. ATM advances shall not be obtained earlier than 3 working days before scheduled travel.

The ATM daily limit is $300, with an ATM limit of $500 per billing cycle. The card contractor will charge the cardholder a transaction fee for ATM use. This charge, which appears on the cardholder's billing statement, is a reimbursable expense. In addition, some banks may charge a service fee for ATM access. That fee also is reimbursable. The FLRA pays a service fee to the contractor for the ATM service. Except for the ATM cash withdrawals discussed above, Government travel advances will not be authorized for employees who are eligible to be issued individual travel cards and who are not otherwise exempt from using a travel card.

6. Reimbursement (Travel Voucher Claims).
The cardholder is responsible for payment of undisputed charges by the due date regardless of whether the cardholder has received reimbursement by the FLRA. Therefore, the cardholder must file travel vouchers that are timely and complete in order to receive timely reimbursement for expenses incurred and to ensure prompt repayments of the travel card balances.

A. As required by the FTR, cardholders must complete their travel vouchers and submit them to their approving officials (normally, the employee's manager or supervisor), within five (5) working days upon return from travel (every 30 days if you are on continuous travel status). Travel vouchers shall be submitted through the CGE portal. As required by the CGE/ARC policy, approving officials must approve properly prepared travel vouchers as soon as practicable or return erroneous or incomplete travel vouchers to travelers within seven (7) business days after the traveler signs the voucher. Employees experiencing problems accessing or navigating CGE should contact the Travel Services Help Desk at (304) 480-8000 (option 1) or Travel@bpd.treas.gov.

B. A travel voucher is considered "complete" when it includes all appropriate signatures and all required receipts. Receipts are required for air, rail, bus, and rental car expenses, and lodging regardless of the amount and for any official travel expenses over $75.00. FLRA employees will be reimbursed for authorized and allowable travel expenses in accordance with the provisions of the FTR.[6]

7. Card Security.

FLRA cardholders are responsible for exercising the same care and responsibility for the security of the FLRA travel card and account number as they would with a personal charge card. The travel card shall not be stored or kept by any individual other than the cardholder. The cardholder shall not allow anyone else to use the card for purchases, ATM transactions, or any other reason. The cardholder is liable for all unpaid charges except charges incurred from (1) bank or merchant error, or (2) unauthorized use as a result of a lost or stolen charge card. If the travel card is lost or stolen, or if unauthorized usage is suspected, the cardholder must notify *Citibank* immediately, on *Citibank's* 24-hour emergency assistance number (1-800-790-7206, toll free in the Continental United States, Hawaii, Alaska, Virgin Islands, Puerto Rico, or Canada, or collect at 904-954-7850 outside these areas) upon discovery of the card's lost or stolen status or of the suspected unauthorized activity. In case of lost or stolen cards, this telephone number may also be used to obtain a replacement card. The cardholder must also contact the FLRA Travel Program Coordinator. The FLRA is not liable for charges incurred on individual FLRA issued travel cards. The FLRA is not liable for lost or stolen cards issued to individual employees.

B. Financial Obligations and Liability.

A. Credit Limit.

Unless otherwise stated, the standard credit limit on the travel card is $3,000 per billing cycle.

B. Monthly Statements.

The travel card contractor (*Citibank*) will issue a monthly billing statement to the travel cardholder at the employee's requested address. It is the responsibility of the FLRA cardholder to pay the full amount billed within the time frame set by *Citibank*. The FLRA expects cardholders to repay all undisputed travel card charges on time.

C. Disputed Charges.

FLRA cardholders who have questions, problems, or disputes about the billing statement must notify *Citibank* in writing or by telephone, within 60 days of the billing date on the statement. Up-to-date contact information is available from the FLRA Travel Program Coordinator.

[6] *See generally*, 41 C.F.R. Part 301, et seq.

D. Delinquencies.

According to the Government Services Travel Card Program Cardholder Account Agreement, *Citibank* billing statements are "due and payable, in full, upon receipt of the statement but must be received by the bank no later than 25 days from the closing date on the statement in which the charge appeared."[7]

An FLRA travel card account is considered delinquent if payment for the undisputed principal amount has not been received within 45 calendar days from the closing date on the billing statement in which the charge appears.[8]

1. Suspensions.

If payment has not been received 55 calendar days from the closing date, *Citibank* and the FLRA will notify the travel cardholder of the initiation of the suspension process.[9]

2. Cancellations.

Either *Citibank* or the FLRA may cancel travel charge cards. Use of a cancelled card or account is considered fraudulent and may result in *Citibank* taking legal action against the cardholder.

a. *Citibank* Cancellation.

If payment for the undisputed principal amount has not been received 126 calendar days from the closing date, *Citibank* will cancel the account.[10] *Citibank* may also cancel the account if the account has been suspended two times during a 12-month period and is past due again.[11] Cancellation may also occur when the travel card is used for unauthorized purposes and the bank has permission to cancel the card from the FLRA.[12] Such cancellations may be accomplished by telephone notification with subsequent written confirmation to *Citibank.*

b. FLRA Cancellation.

If the FLRA takes action to cancel a travel card, the employee will be notified of the cancellation before it occurs. The FLRA will not cancel a travel card while the employee-cardholder is in an authorized travel status.

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[7] *See* Government Services Travel Card Program Cardholder Account Agreement at section (4).

[8] Id. at section (10) A.

[9] Id.

[10] Id. at section (10)B.

[11] Id.

[12] Id.

3. Collection.
For accounts that are 70 days delinquent, 5 U.S.C. § 5701 authorizes Federal agencies to collect undisputed delinquent amounts incurred on an employee's individually billed travel card from an employee's pay. The travel card contractor must make a written request to the agency for this collection, after which the agency may then proceed with the collection. Collection procedures will be carried out in accordance with the due process provisions of 31 U.S.C. § 3716. In accordance with 31 CFR Parts 900-904 (the Federal Claims Collection Standards), the due process requirements that must be implemented prior to salary offset are:

- Providing the employee with written notice of the type and amount of the claim, the intention to collect the claim by deduction from the employee's disposable pay, and an explanation of the employee's rights as a debtor;
- Providing the employee the opportunity to inspect and copy the records related to the claim;
- Providing the employee an opportunity to request review of the agency decision related to the claim; and
- Providing the employee an opportunity to make a written agreement with the charge card vendor to repay the delinquent amount.

E. Refunds Upon Cancellation of Travel.
When a cardholder must cancel travel that has been scheduled through CGE, he/she is responsible for obtaining any available refunds from the vendors. If a refund is denied, then the cardholder must follow the disputed charge process in the Government Services Travel Card Program Cardholder Account Agreement.

C. Automatic Reissuance of Expiring Cards.
The process for reissuing expiring travel cards is automatically generated by the travel card contractor. Employees who maintain a current account with no past due balance will receive new cards on an automatic basis. Expiring travel cards will not be reissued to any FLRA cardholder with a delinquent balance. Past due accounts will be closed upon expiration. Applications for renewal must be approved by the Travel Program Coordinator, the employee's supervisor, and the Executive Director.

D. Misuse of the Card.
The FLRA shall not tolerate misuse of the FLRA travel card and cardholders who do misuse their FLRA travel cards shall be subject to appropriate administrative or disciplinary action, including cancellation of

the card or more serious action. The FLRA travel card shall be used solely for reimbursable expenses associated solely with the official travel of the individual cardholder. Use of the travel card for ATM cash advances must be solely for official FLRA business, as described in this instruction. The FLRA travel card shall not be used for non-reimbursable expenses. Examples of non-reimbursable expenses include, but are not limited to: alcoholic beverages, rental movies, and retail purchases unrelated to official travel. The FLRA travel card shall not be used for travel expenses for other than the actual cardholder named on the travel card, nor shall the actual cardholder permit anyone else to use his/her card.

E. Table of Penalties

The Table of Offenses and Disciplinary Actions (Table of Penalties) is provided to serve as a guide for administering discipline for the unauthorized use of the Government approved charge card accounts, for other than disputed charges. This table includes a range of penalties providing the manager or supervisor with latitude to consider appropriate mitigating or aggravating circumstances. Columns delineating the number of offenses, first, second, and third, are provided for the application of progressive corrective actions.

FLRA managers and supervisors are required to counsel employees when informed about travel card misuse and delinquency and to initiate disciplinary action as appropriate. To ensure that managers and supervisors are aware of the options available for correcting travel card-related misconduct, they must contact the Director, HRD, for assistance on a case-by-case basis before counseling or initiating disciplinary action.

The appropriate disciplinary measure will depend on the specific facts related to the case. If an employee is unable to travel because his/her travel card has been suspended or revoked and travel is a condition of employment, the manager or supervisor may be required to initiate action to reassign, demote, or remove the employee from Federal service.

Table of Offenses and Disciplinary Actions (Penalties)

For Delinquent and Unauthorized Use of the Government Travel Charge Card

NATURE OF OFFENSE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
Payment of travel credit card is sixty (60) days or more past due.	Oral Admonishment to Written Reprimand.	Written Reprimand to 5-day Suspension.	10-day Suspension.
Failure to properly pay travel credit card after receiving reimbursement (60 days or more past due).	Written Reprimand to 5-day Suspension.	5-to-14 day Suspension.	15-day Suspension to Removal.
Travel credit card used for personal expenses, purchases not related to official government business, or for expenses for anyone other than the actual cardholder, or cardholder permits another person to use his/her card.	Written Reprimand to 5-day Suspension and offer counseling (Employee Assistance Program).	10-day Suspension to Removal.	Removal.
Travel credit card used for personal purchases (not related to official travel) and employee is delinquent in payment (60 days or more past due).	Written Reprimand to 10-day Suspension and offer counseling (Employee Assistance Program).	10-day Suspension to Removal.	Removal.
Misuse and/or conversion of Government funds for personal use.	Written Reprimand to Removal.	Removal.	

F. Centrally Billed Accounts (CBA).

1. General.
   A CBA is an account arranged for by a travel management center for which the agency serves as the cardholder, and from which agency employees may charge certain expenses as authorized elsewhere in this instruction. Cards for CBA accounts are issued to FLRA activities that make travel arrangements and those activities guarantee payment. All transportation expenses billed to the agency are verified prior to payment by an agency payment certifying official against the non-frequent or exempt traveler's approved travel voucher.

   Individual travelers using a CBA must inform the CBA cardholder promptly when scheduled travel is canceled, so that charges to the CBA for previously purchased tickets or other expenses can be refunded,

2. Travel Advances.
   Travel advances will be issued to employees who do not have a travel card. Such advances will be limited to amounts covering lodging, meals, and miscellaneous travel-related expenses (e.g., taxis). Travel advances may be obtained by completing Form SF 1038, "Advance of Funds Application and Account." If the employee is a first-time traveler or if the employee's financial institution has changed since the last travel advance, the employee must complete [FLRA Form 196, "Direct Deposit,"] so that a direct deposit of funds transfer may be made to the employee's financial institution account.

105.2 Procedures for Managing Canceled Accounts.
Individuals who have lost travel card privileges due to their own negligence should not be permitted to pass the burden and cost along to agency administrative processes. Therefore, requests to use centrally billed accounts by employees who have lost their cards because of delinquency must be approved in writing by their first-line manager or supervisor and the Travel Program Coordinator.

Applications for waivers must be submitted, by written memorandum, on a trip-by-trip basis and include: a description of the circumstances leading to the card cancellation and a detailed plan for clearing up any outstanding delinquencies within 6 months from the date of the original cancellation. Employees who have eliminated all debt to the contractor may file an appeal for reinstatement. The request must be filed through the agency Travel Program Coordinator and be endorsed by the agency Director, ASD, and the Executive Director. The contractor will evaluate appeals on a case-by-case basis and has no obligation to approve requests for reinstatement.

0106. CONCLUSIONS AND EFFECTIVE DATE.

A. Conclusions.

Timely payment of government contractor-issued travel cards is the employee's obligation. The FLRA has a good record of paying travel card debt and FLRA employees should continue to set a good example by making repayment a priority. Any questions concerning FLRA government travel and the charge card program should be directed to the employee's manager or supervisor or to the FLRA Travel Program Coordinator.

B. Effective Date.

The policies addressed in this instruction are effective immediately and supersede any conflicting policy in FLRA Instruction No. 1501.2 or other policy instructions dealing with this specific guidance/topic(s).

3/20/15

Sara Whittle Spooner
Executive Director

Date

Travel Management Center (ASK MR. FOSTER) Program

Table of Contents

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 1501.1
08/09/89

SUBJECT: Travel Management Center (ASK MR. FOSTER) Program

1. PURPOSE. This regulation announces the implementation of an agreement with ASK MR. FOSTER as a Travel Management Center (TMC) for the Federal Labor Relations Authority (FLRA), and establishes the policies and procedures covering the use of available services. ASK MR. FOSTER has been awarded the contract by the General Services Administration for the making of all necessary transportation arrangements for Government travel for the FLRA.

2. SCOPE. ASK MR. FOSTER shall be responsible for passenger transportation reservations and delivery of required tickets, reservations at hotels/motels, automobile rental services and preparation of travelers' itineraries for the FLRA. All travel requirements shall be fully observed and all official travel must be authorized on an official FLRA Form 83, Travel Order and Itinerary. Use of ASK MR. FOSTER does not relieve employees of prudent travel practices and observance of rules and regulations governing official travel as set forth in the Federal Travel Regulations, FPMR 101-7 (41 C.F.R. § 101-7). No other travel management service may be used.

3. RESPONSIBILITIES.

   a. The Executive Director is responsible for developing the policy for FLRA on TMCs and designating the coordinator for the FLRA.

   b. The Director of the Financial Management Division is designated as the coordinator to act as liaison between ASK MR. FOSTER and FLRA employees, regarding the general administration of the TMC.

   c. Travelers are responsible for making travel arrangements directly with ASK MR. FOSTER.

DISTRIBUTION: C, M, G, F, ALJ, ED, SO, AF(F), AG(A), OA, OA(P), OA(FMD), OA(BASD), RO-1 to RO-9, OC, OM1, OM2, IRRS, CC

OPI: OA(FMD)

4. REFERENCES.

a. Federal Property Management Regulations, Federal Travel Regulations (FPMR 101-7).

b. GSA FPMR Temporary Regulation A-24, Use of Travel Agents and Travel Management Centers (TMCs) by Federal Executive Agencies.

5. DEFINITIONS.

a. Travel Management Center (TMC) means a travel agency under contract for handling travel arrangements for employees on official travel. ASK MR. FOSTER is established as the FLRA's TMC.

b. Government Travel System (GTS) means an agency account number issued by Diners Club under which the FLRA is billed directly for passenger tickets issued.

c. Charge Card means a Diners Club Government credit card for use by travelers to cover major travel and transportation items such as passenger transportation tickets, rental vehicles, lodging and meals in connection with official travel. The term does not include personal credit cards issued to employees based upon their own financial merit by any company.

d. Coordinator means the Director of the Financial Management Division, who is designated to administer the TMC agreement.

e. Frequent Traveler means an employee who travels 2 or more times a year.

6. TRANSPORTATION ARRANGEMENTS.

a. Travel arrangements are to be made through ASK MR. FOSTER after the travel order is approved. Travelers shall contact the appropriate office of ASK MR. FOSTER and provide all necessary information regarding their travel.

b. Infrequent travelers are to use the Government Travel System (GTS) account to purchase common carrier tickets through ASK MR. FOSTER. The GTS arrangement does not involve a charge card, an account number assigned by Diners Club under which FLRA is billed directly is utilized.

c. Frequent travelers are to use the GTS account to obtain common carrier tickets but, as necessary, may use their Diners Club charge card to obtain passenger tickets. They must complete a Traveler Profile form to expedite the reservation process and eliminate the need for ASK MR. FOSTER to request information repeatedly.

d. Mandatory Government program for air travel:

(1) The GSA has awarded contracts to certain airlines for reduced airfares (YCA and MCA) between numerous city-pairs. These YCA and MCA fares may be obtained only with a charge card or GTS account. Where city-pairs are covered by contract, ASK MR FOSTER must use such contract fares unless the participating Federal agency approves the use of noncontract fares under the exceptions specified in GSA regulations. Contract fares shall not be used for any personal travel, including those instances where portions of personal travel are substituted for a leg of an officially authorized trip.

(2) There are a limited number of noncontract fares (YDG or similar), restricted to official Government travelers, which are obtainable only with a charge card or GTS account. Such fares can be used only when contract fares are not available. They may not be used in preference to contract fares, even if they may be lower in cost. They shall also not be used for any personal travel including those instances where portions of personal travel are substituted for a leg of an officially authorized trip.

(3) In the event no contract fare exists, the next fare that should be used is a government match fare such as YDG or MDG. If neither of these exists, the lowest unrestricted coach fare should be used. Excursion or promotional fares that have penalties attached for change or nonuse of the ticket once issued should not be used, since penalties would have to be paid in the event of change or nonuse.

(4) Full coach fares may be used if no other reduced fares are available.

(5) Federal Travel Regulations prohibit first-class travel except for a few specific exceptions. Any exceptions require the prior approval of the Executive Director for Authority employees, the General Counsel for Office of General Counsel employees and the Executive Director, FSIP for FSIP employees.

(6) The Fly America Act generally prohibits the use of non-American carriers, except as provided in the Federal Travel Regulations.

(7) If personal travel is combined with official travel, ASK MR. FOSTER will ticket the traveler for the official travel and then reissue the ticket for the official and personal travel. Government fares may not be used on any portion of your intinerary that involves personal travel.

7. TICKET DELIVERY.

a. Tickets for employees at 500 C Street, SW., Washington, D.C. may be picked up at the following location:

ASK MR. FOSTER Travel Service
Suite 205
525 School Street, SW.
Washington, D.C. 20024

b. Tickets for employees of the Washington Regional Office will be delivered to the Regional Office.

c. For employees of other regional offices and at sub-office locations, tickets will be delivered to each worksite or may be picked up at the appropriate ASK MR. FOSTER office.

d. ASK MR. FOSTER will provide emergency ticket delivery or arrange for emergency prepaid tickets at the appropriate airport with 2 hours' notice.

8. UNUSED AND LOST TICKETS.

   a. If a complete or partial ticket is not used and was obtained through GTS, the employee shall apply for refund through the Coordinator. ASK MR. FOSTER shall issue refunds immediately, in the form of a credit refund receipt returned to the Agency, with credit applied to the Agency's GTS account. Unused tickets should be attached to the employee's travel voucher.

   b. If a complete or partial ticket is not used when obtained through an individual's Diners Club credit card, the unused tickets shall be returned to the airline representative by the employee and a refund credit should be obtained. The credit will be applied to the individual's charge card account.

   c. If an airline ticket is lost, the procedures described above for unused tickets are to be followed. The Lost Ticket Application (available through ASK MR. FOSTER) is to be filed with the appropriate representative.

9. LODGING. Upon request, ASK MR. FOSTER shall provide lodging reservations including initiating and confirming reservations. ASK MR. FOSTER shall obtain discounted Government rates for employees when available. Employees may also obtain lodging reservations directly from hotels/motels.

10. RENTAL VEHICLES. Upon request, ASK MR. FOSTER shall reserve commercial vehicles for employees and obtain Government discount rates when available. Employees may also obtain car rental reservations directly from car rental companies.

11. TRAVELER'S ITINERARIES. ASK MR. FOSTER shall provide for each employee a complete, printed itinerary document, including:

   a. Carrier(s) name;

   b. Flight, train, and bus exception codes for non-use of contract airfares;

   c. Departure and arrival times for each segment of the trip;

d. Name, phone number, and location of hotel/motel and rates booked at each destination; and

e. Name, phone number, and location of rental cars and rates booked at each destination.

12. FOREIGN TRAVEL. All foreign travel must be approved in advance by the Chairman, Authority Member, General Counsel or Chairman, FSIP for their respective employees. In addition to arranging reservations for transportation and hotel/motel accommodations, ASK MR. FOSTER shall:

a. Provide employees with advice on necessary health requirements, including types of inoculations and vaccinations either required or suggested for foreign travel;

b. Provide information and advice on conditions at the various foreign destinations, including climate conditions, types of clothing which are appropriate, location of American embassies and consulates, etc.;

c. Provide technical advice on such matters as foreign currency exchange rates, excess baggage requirements, fees, etc.; and

d. Provide information regarding passports and visas for foreign travel.

13. BILLING PROCEDURE. Individual charge card holders will not be billed for airline tickets obtained through ASK MR. FOSTER. All tickets will be charged to the FLRA GTS account. FLRA will be billed directly by Diners Club for charges made through the GTS account.

This regulation is effective August 9, 1989.

Clyde B. Blandford, Jr.
Acting Executive Director

Federal Labor Relations Authority

WASHINGTON, D.C. GENERAL AND ADMINISTRATIVE

POLICY INSTRUCTION

FLRA 3870 (Revised)

Voluntary Legal Assistance Pro Bono Legal Services and Legal Support	Issue Date: August 11, 2015

This Policy sets out the procedure and conditions for approval of Federal Labor Relations Authority ("FLRA" or "Agency") employees' pro bono activities.

1. Policy

Recognizing the significant unmet need for legal services in the nation, the FLRA encourages employees to volunteer their time to assist individuals and organizations that provide pro bono legal services in their communities. The FLRA encourages Agency attorneys to set a personal goal of at least 50 hours of pro bono legal service per year. *See* American Bar Association Model Rule 6.1.

2. Definition of Pro Bono Legal Services

Pro bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services and legal support to:

- persons of limited means or other disadvantaged persons;

- charitable, religious, civic, community, governmental, health, and educational organizations in matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose;

- individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; or

- activities for improving the law, the legal system, or the legal profession.

3. Limitations on Pro Bono Activity for Agency Attorneys and Non-Attorneys

A. Prior Approval Required.

i. Approval Procedure for Agency Attorneys. Agency attorneys who wish to engage in pro bono activities must apply for and receive prior approval in accordance with the FLRA's requirements for seeking approval to engage in outside activities. *See* 5 C.F.R. Part 5901, Supplemental Standards of Ethical Conduct for Employees of the Federal Labor Relations Authority. The Designated Agency Ethics Official ("DAEO"), generally the Solicitor, may designate some activities as preapproved. In addition, an attorney may request that the DAEO preapprove a particular pro bono activity by sending a written request to the DAEO. A list of pro bono activities preapproved by the DAEO, if any, will be available on the Agency's intranet. Attorneys seeking to participate in non-preapproved pro bono activities should follow the procedure at subsection (a) below. Attorneys seeking to participate in preapproved activities should consult subsection (b).

a. Non-preapproved Activities. With respect to pro bono activities that have not been preapproved by the DAEO, an attorney should fill out the attached Request for Approval Form, submit it to his or her supervisor for approval, and then forward the Form to the DAEO or Alternate DAEO for final approval. *See* 5 C.F.R. § 5901.102(c). Such supervisory approval will normally be granted, to the extent the attorney's workload permits and the activity would not create a conflict with the attorney's official duties, as described in Section B, below. Supervisors are encouraged to be flexible to accommodate, where feasible, the efforts of their employees to perform pro bono legal work.

b. Preapproved Activities. With respect to preapproved pro bono activities, an attorney need not submit the attached Request for Approval to the DAEO, but need only notify the DAEO of the attorney's pro bono activities. In addition, the attorney must request approval from his or her supervisor to the extent the pro bono activity will or could take place during the attorney's fixed work schedule or, for attorneys on a flexible work schedule, during the Agency's core time, but not including any lunch or other unpaid breaks (collectively,

"duty time"). *See* Alternative Work Schedules, FLRA Instruction No. 3640 at 3. Such supervisory approval will normally be granted, to the extent the attorney's workload permits. Supervisors are encouraged to be flexible to accommodate, where feasible, the efforts of their employees to do pro bono legal work.

ii. Approval Procedure for Non-Attorney Agency Employees. Non-attorney Agency employees who wish to volunteer for a legal services provider should consult with the DAEO or Alternate DAEO to determine whether prior approval is required.

B. Conflicts of Interest.

i. Agency employees may not engage in pro bono or volunteer activities that create or appear to create a conflict of interest with their work for the Agency. Under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635, a conflict of interest generally exists when the activity would:

   a. require the recusal of the employee from significant aspects of the employee's official duties, *see* 5 C.F.R. § 2635.802(b);
   b. create an appearance that the employee's official duties were performed in a biased or less than impartial manner, *see* 5 C.F.R. § 2635.502; or
   c. create an appearance of official sanction or endorsement, *see* 5 C.F.R. § 2635.702(b).

ii. With limited exceptions, an Agency employee may not participate in matters or proceedings in which the United States is a party or has a direct and substantial interest. *See* 18 U.S. C. § 205(a)(2). Agency attorneys who wish to undertake such representation should seek advice from the DAEO or Alternate DAEO as to how the exceptions to this general prohibition apply.

iii. An Agency employee may not act as an agent or attorney for prosecuting claims against the United States, or any agency thereof. *See* 18 U.S.C. § 205(a)(1).

iv. Agency employees are cautioned that conflicts of interest may arise with respect to preapproved pro bono activities. Employees have an independent obligation to ensure that their participation in all pro bono activities, including preapproved activities, complies with the Standards of Ethical Conduct for Employees of the Executive Branch, *see* 5 C.F.R. Part 2635, as well as other applicable statutes and regulations.

C. Use of Official Position or Public Office. Agency employees who provide pro bono legal services or who participate in volunteer activities for legal services providers

may not indicate or represent in any way that they are acting on behalf of the Agency, or in their official capacity. The incidental identification of an employee's position or office – for example, when an office number and street address are not sufficient to ensure mail delivery or when receiving a telephone call – is not prohibited.

i. An Agency employee may not use office letterhead, agency or office business cards, or otherwise identify himself or herself as an Agency employee in any communication, correspondence, or pleading connected with pro bono legal activities.

ii. An Agency attorney is responsible for making it clear to the client, any opposing parties, or others involved in a pro bono case, that the attorney is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the Agency.

D. Prohibition on Compensation. Agency employees may not receive compensation for their pro bono activities, nor may an Agency employee designate a recipient for the payment of any fees generated by his or her pro bono activities.

4. Use of Agency Resources

A. Hours of Work. Agency employees are encouraged to seek pro bono legal services opportunities that can be accomplished outside their duty time. However, supervisors normally will grant employees' requests to use annual leave, compensatory time, or flexible work schedules to perform approved pro bono activities. A supervisor's personal views regarding the substance of the pro bono legal services may not influence the decision to grant an employee's request to use leave, compensatory time, or a flexible work schedule to perform approved pro bono activities. In addition, employees may receive administrative leave for performing approved pro bono activities in the circumstances described below.

B. Administrative Leave. Performing pro bono legal services is a professional duty for all attorneys. It also enhances the skills Agency employees use in their work for the Agency. To support the fulfillment of this professional duty, the Agency provides 40 hours per year of administrative leave for approved pro bono activities for all employees.

Administrative leave may be granted in the following circumstances:

i. Activities that cannot be accomplished outside of regular work hours. If an employee has not used the maximum number of administrative leave hours for approved pro bono activity in a calendar year, supervisors shall approve a

request for administrative leave for approved pro bono activity under this section if the activity cannot be accomplished outside of the employee's regular work hours, e.g., a court appearance, mediation, client meeting, or training.

ii. Officially sponsored or sanctioned administrative leave for DAEO-approved pro bono activities. The Chairman of the Agency may, in his or her discretion, officially sponsor or sanction the use of administrative leave for a pro bono activity approved by the DAEO pursuant to Section 3A of this Policy by all Agency employees who wish to participate in the activity. In the event the Chairman chooses to do so, the DAEO will notify Agency employees by email that the Chairman is officially sponsoring or sanctioning the use of administrative leave for the activity, and that administrative leave will be granted to all employees who participate in the activity, provided that they have obtained supervisory approval under Section 3A of this Policy.

iii. Particular activities that will clearly enhance the professional development or skills of an employee in his or her current position. When an employee and his or her supervisor agree that a pro bono activity will clearly enhance the professional development or skills of an employee in his or her current position, the supervisor may approve the employee's use of administrative leave to perform the activity during duty time.

Administrative leave must not be granted for pro bono legal services that directly benefit an employee or those with whom an employee has a personal relationship.

C. Use of Office Equipment. In accordance with 5 C.F.R. §§ 2635.101(b)(9), 2635.704(a), and FLRA Instruction No. 6930, no Government property, resources, or facilities not otherwise available to the public may be used in pro bono activities, except to the extent that such use falls within the FLRA's policy on permitting such limited "personal use." Specifically with respect to commercial electronic databases, this Policy does not authorize their use for pro bono activities when there is an extra cost to the Agency. However, use of research tools that do not incur any additional cost to the Agency, such as Westlaw or LEXIS, is authorized. In addition, research using the library's books is authorized, as it involves only negligible additional expense to the United States.

D. Use of Agency Clerical Support. Pro bono activities may not be assigned to or otherwise required of support staff as part of their official duties.

5. Additional Considerations

A. Malpractice Coverage. Before agreeing to meet with or accept a pro bono legal client, an Agency attorney should determine whether the referring pro bono program or organization has a malpractice insurance policy which covers volunteer attorneys. The Agency does not provide malpractice coverage for pro bono work.

B. Professional Licensing Fees and Restrictions on Practice. FLRA attorneys are advised to consult the local rules and regulations of the jurisdiction in which they provide pro bono services regarding any professional fees and practice restrictions that may exist.

6. Waiver

This Policy is intended only to encourage increased pro bono activity by FLRA employees, and it is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

The United States and the FLRA will not be responsible in any manner or to any extent for any negligent or otherwise tortuous acts or omissions on the part of any FLRA employee engaged in any pro bono activity. While the FLRA encourages pro bono activity by its employees, the Agency exercises no control over the services and activities of employees engaged in pro bono activities, nor does it control the time or location of any pro bono activity. Each employee is acting outside the scope of his or her employment whenever the employee participates, supports, or joins in any pro bono activity.

* * *

These limitations leave available significant pro bono opportunities for Agency employees. Questions regarding this Policy should be directed to the Solicitor's Office.

Effective Date

This Policy is effective: August 11, 2015

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Sarah Whittle Spooner
Executive Director, Federal Labor Relations Authority

USE OF GOVERNMENT TELEPHONE SYSTEMS

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FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

Regulations

FLRA 1740.1

04/05/88

SUBJECT: USE OF GOVERNMENT TELEPHONE SYSTEMS

Section 1 - Purpose. The purpose of this regulation is to implement the Federal Labor Relations Authority's (FLRA) policy on the use of the Government's telephone systems.

Section 2 - Scope. The regulation applies to all telephone usage and to all employees of the FLRA.

Section 3 - References. 41 C.F.R. Part 201-38.

Section 4 - Approval Authorities. The following officials, for their respective offices, may approve long distance telephone calls as necessary in the interest of the Government:

1. Chairman, Authority Members, General Counsel and Chairman, FSIP.

2. Executive Director of the Authority, Associate General Counsel and Executive Director, FSIP.

3. Chief Counsels, Solicitor, Director of Administration, Director of Information Resources and Research Services, Director of Case Control, Assistant General Counsels, Office of the General Counsel Field Managers and Regional Directors.

4. Any other staff member designated by the Chairman, an Authority Member or the General Counsel. Such designation must be in writing with a copy sent to the Director of Administration for record purposes.

Section 5 - Authorized Use of Government Telephone Systems.

1. The use of Government telephone systems (including calls over commercial systems which will be paid for by the Government) shall be limited to official business calls. Official business calls include: those calls necessary to conduct the official business of the FLRA; emergency calls; and calls that are approved as necessary in the interest of the Government.

DISTRIBUTION: OC, OM, OMM, OE, FSIP, OGC, XD, OCC, SOL, ALJ, OA, OA/B, OA/F, OA/P, IRRS

OPI: OA

2. In order to determine if a particular call may be properly authorized in the interest of Government, in addition to calls related to case processing, the following criteria will be used:

   A. The call does not adversely affect the performance of official duties by the employee or the employee's organization;

   B. The call is of reasonable duration and frequency; and

   C. The call could not reasonably have been made at another time.

3. The following types of telephone calls have been determined to be in the interest of the Government, will be paid for by the Government and, therefore, do not need to be specifically approved:

   A. Calls to notify family and the doctor when an employee is injured on the job.

   B. An employee traveling for the FLRA is delayed due to official business or transportation difficulties and calls to notify family, home or doctor of schedule changes.

   C. An employee traveling for more than one night on official business in the Continental United States makes a brief daily call home.

   D. An employee is required to work overtime without at least 1 day's advance notice and calls within the local commuting area (the area from which the employee regularly commutes) to notify family of the change in schedule, to make alternate transportation, or child care arrangements.

   E. An employee makes a brief daily call to locations within the commuting area to speak to spouse, minor children, a school the minor children attend, or a day-care center the minor children attend.

   F. An employee makes brief calls to locations within the local commuting area that can be reached only during normal working hours, such as calls to a local government agency or a physician.

G. An employee makes brief calls to locations within the local commuting area to arrange for emergency repairs to a home or an automobile.

H. An employee traveling on official business outside the Continental United States (CONUS) may make a personal call home if approved, in writing, on the employee's travel orders.

I. An FLRA official designated in Section 4 above specifically approves, in advance and preferably in writing, a telephone call, in situations other than indicated above, as being in the interest of the Government.

4. The types of calls listed in paragraph 3 above are not to be placed through the telephone systems of other departments and agencies. The FLRA's telephone system and telephone credit cards are the only authorized means for making the telephone calls listed in paragraph 3 above.

5. Personal calls that must be made during normal working hours may be made over the commercial long distance telephone network if the calls are consistent with the criteria in paragraph 2 above and are:

A. Charged to the employee's home telephone number or other non-Government number (third party call);

B. Made to an 800 toll-free number;

C. Charged to the called party if a non-Government number (collect call); or

D. Charged to a personal telephone card.

Section 6 - Employee Considerations. All employees of the FLRA are reminded that the use of Government telephone systems is a privilege. Government telephone systems may only be used under the conditions outlined in this regulation. Where possible, non-official business calls should be made during a lunch period or other off-duty periods. Employees are reminded that misuse of Government telephone systems in any form may result in appropriate disciplinary action under FLRA Regulations - Employee Discipline 3810.1 and/or Adverse Actions and Performance-Based Actions 3830.1 or other criminal, civil or administrative action.

Section 7 - Prohibited Practices. The following practices set forth in this section are prohibited:

1. Use of the following services, equipment or facilities for other than official business calls, emergency calls, calls that have been determined by the FLRA to be necessary in the interest of the Government, or calls specifically approved by designated officials as necessary in the interest of the Government:

   A. Federal Communications System (FTS);

   B. Government provided long distance telephone service, other than FTS; or

   C. A commercial network where the Government pays for the call;

2. Use of any Government provided telephone service, equipment or facility for calls permitted by Section 5 of this regulation that specifically interferes with the conduct of Government business;

3. Making an unauthorized telephone call with the intent to later reimburse the Government;

4. Listening-in or recording of telephone conversation except as specified in 41 C.F.R. Part 201-6.2; or

5. Use of telephone call data in any way other than that authorized by 41 C.F.R. Part 201-38.007-5.

Section 8 - Collections. The FLRA will collect from the appropriate employee for any unauthorized calls. Each unauthorized call will be valued on the basis of the commercial long distance rate rounded to the nearest dollar and an amount rounded to the nearest dollar to cover the FLRA's administrative costs, such as the cost necessary to determine the call was unauthorized and to process the collection. Any money collected will be deposited in the FLRA's centrally funded account for telecommunications services. Employees are reminded that reimbursing the Government does not automatically exempt an employee from appropriate administrative, civil or criminal action.

Section 9 - Call Detail Reports and Commercial Telephone Bills. The Director of Administration will ensure that the FLRA receives a monthly call detail report from the General Services Administration. The Office of Administration also receives bills

for telephone services, such as bills for telephone credit card usage, and these bills will be forwarded to the appropriate management official listed in Section 4 for approval. The Office of Administration will review reports to determine whether there are any questionable calls that need to be brought to the attention of management officials. The appropriate management official listed in Section 4 will certify the propriety of any questionable telephone calls within that person's jurisdiction.

This regulation is effective April 5, 1988.

Clyde B. Blandford, Jr.
Acting Executive Director

Federal Labor Relations Authority
WASHINGTON, D.C.

GENERAL AND ADMINISTRATIVE
POLICY INSTRUCTION
FLRA No. 3630.2A

VOLUNTARY LEAVE TRANSFER PROGRAM	Issue Date: Dec 8, 2010

Section 1 - Purpose. The purpose of this instruction is to set forth the procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one employee may be transferred for use by another employee who needs such leave because of a medical emergency.

Section 2 - Cancellation. This instruction supersedes FLRA Instruction 3630.2, Temporary Leave Transfer Program, dated November 22, 1988.

Section 3 – Scope. This instruction applies to employees to whom subchapter I, Chapter 63 of Title 5, U.S.C., applies.

Section 4 – Policy. It is the policy of the FLRA as a concerned employer to enhance the well-being of its employees through the effective use of this program while maintaining and improving workforce productivity. To the extent feasible and consistent with law and regulation, the confidentiality of information regarding leave donors and leave recipients will be maintained.

Section 5- Reference.

a. Federal Employee Leave Act of 1988, as amended by, Federal Employees Leave Sharing Amendments Act of 1993.

b. Absence and Leave – 5 C.F.R. Part 630, Subpart I, Voluntary Leave Transfer Program.

Section 6 – Definitions.

a. "Employees" has the meaning given that term in 5 U.S.C. 6301(2).

b. "Family member" means an individual with any of the following relationships

to the employee:

(i) Spouse, and parents thereof;

(ii) Sons and daughters, including adopted children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Brothers and sisters, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner (adult in a committed relationship with another adult) and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

c. "Leave donor" means employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her employing agency.

d. "Leave recipient" means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

e. "Medical emergency" means a medical condition of an employee or family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

f. "Paid leave status under subchapter I" means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

g. "Shared leave status" means the administrative status of an employee while the employee is using transferred leave from a leave bank under subpart J of 5 C.F.R. Part 630.

Section 7 – Approving Official. The approving official within the FLRA for applications to become a leave recipient and for requests to donate leave is the Director of Human Resources.

Section 8 – Application to Become a Leave Recipient.

a. An employee may make written application to become a leave recipient by completing OPM Form 630 http://opm.gov/forms/pdf_fill/opm630.pdf.. If an employee is not capable of making application on his or her own behalf, then a personal representative of the potential leave recipient may make written application on his or her behalf.

b. An application shall contain the following information:

(i) The name, position title, and grade or pay level of the potential leave recipient;

(ii) A brief description of the nature, severity, and anticipated duration of the medical emergency affecting the potential recipient;

(iii) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the FLRA so requires; and

(iv) Any additional information that the FLRA may require.

Section 9 – Approval or Disapproval of Application to Become a Leave Recipient.

a. The approving official shall review a potential leave recipient's application to determine whether the employee has been affected by a medical emergency.

b. The approving official shall determine whether the employee's absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

c. In determining whether a medical emergency is likely to result in a substantial loss of income, the approving official shall not consider factors other than whether the employee's absence from duty without available paid leave is (or is expected to be) at least 24 hours (or in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

d. If the application is approved, then the approving official shall notify the leave recipient, or his or her personal representative, within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received, that: (1) the application has been approved; and (2) other employees may request the transfer of annual leave to the account of the leave recipient.

e. If the application is not approved, then the approving official shall notify the applicant (or another employee who made application on behalf of the potential leave recipient), within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received, that: (1) the application has not been approved; and (2) the reasons for the disapproval.

Section 10 – Request to Donate Leave. An employee may submit a request that a specified number of hours of accrued annual leave be transferred to the annual leave account of a specified leave recipient using OPM Form 630A. http://opm.gov/forms/pdf_fill/opm630A.pdf The request must be voluntary and submitted in writing to the Director of Human Resources. The specified leave recipient may be either an eligible FLRA employee or an eligible employee of another federal agency.

Section 11 – Approval or Disapproval of Request to Donate Leave.

a. Subject to the limitations set forth in Section 12, the FLRA may approve the transfer of all or part of the annual leave the donor requests to have transferred to the annual leave account of the specified leave recipient.

b. Annual leave transferred under this section may be submitted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advance annual or sick leave granted on or after a date that the FLRA fixes as the beginning of the period of medical emergency for which the LWOP or advanced annual or sick leave was granted.

c. The FLRA may accept the transfer of annual leave from leave donors employed by other agencies when, in its judgment, the amount of annual leave transferred from leave donors within the FLRA may not be sufficient to meet the needs of the leave recipient. Donors may submit their requests to donate leave by completing OPM Form 630B. http://opm.gov/forms/pdf_fill/opm630B.pdf. Before accepting the transfer of annual leave from a leave donor employed by another agency, the Director of Human Resources shall verify that the leave donor's employing agency has approved the leave donor's request.

d. If the request to donate leave is approved, then the Director of Human Resources shall notify the donor and the leave recipient of the approval in writing.

e. If the request is disapproved, in whole or in part, then the Director of Human Resources shall notify the proposed donor in writing of the reasons for the disapproval.

Section 12 – Limitations on Donation of Annual Leave.

a. Leave may not be transferred from a potential leave donor to the leave donor's immediate supervisor.

b. In any one leave year, a leave donor may donate no more than one-half of the annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

c. A leave donor who is projected to have annual leave subject to forfeiture at the end of the leave year under 5 U.S.C. § 6304(a), that is, "use or lose" annual leave, may donate no more than the lesser of –

(i) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or

(ii) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

For example, an employee who is scheduled to work and receive pay and who has 80 hours of "use or lose" annual leave, decides 3 days prior to the end of the leave year to donate leave. In this example, the employee may only donate 24 hours of annual leave because that is the number of hours that he or she has scheduled to work and receive pay prior to the end of the leave year. The remaining 56 hours of annual leave would be forfeited.

d. The FLRA may, on a case-by-case basis, waive the limitations set out in paragraphs b. and c. of this Section based on one or more of the following criteria:

(i) Whether or not the amount of annual leave transferred from

leave donors within the FLRA and leave donors from other Federal agencies would be sufficient to meet the needs of the leave recipient.

(ii) The expense to the FLRA of accepting a proposed donation of leave that otherwise would be subject to forfeiture (*i.e.*, the number of hours of leave proposed to be donated; the proposed donor's hourly rate of pay).

(iii) The relative hourly rates of pay of the proposed donor and the proposed recipient; and

(iv) Other factors that the FLRA may need to address to reach a decision that enhances the well-being of its employees in a cost-effective manner.

Section 13 – Use of Transferred Leave.

a. A leave recipient may use annual leave transferred to his or her annual leave account only for the purpose of a medical emergency for which the leave recipient was approved.

b. Annual leave that accrues to the account of the leave recipient shall be used before any transferred annual leave.

c. The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by Chapter 63 of Title 5, United States Code, 5 C.F.R. Part 630 and FLRA Instruction No. 3630.1A, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. § 6304(a).

d. Transferred annual leave may not be: (1) transferred to another leave recipient; (2) transferred to another Federal agency upon the leave recipient's transfer of employment; (3) included in a lump-sum payment under 5 U.S.C. §§ 5551 or 5552; or (4) made available for recredit under 5 U.S.C. § 6306 upon the leave recipient's reemployment by a Federal agency.

Section 14 – Termination of Medical Emergency.

a. The medical emergency which provided the basis for approval of an application to become a leave recipient is considered to have terminated:

(i) when the leave recipient's employment with the FLRA terminates;

(ii) at the end of the biweekly pay period in which it is determined that the leave recipient is no longer affected by a medical emergency; or

(iii) at the end of the biweekly pay period in which the FLRA receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.

b. The leave recipient's supervisor and the approving official shall continuously monitor the status of the medical emergency to determine whether the leave recipient continues to be affected by the emergency.

c. When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donor in accordance with Section 15 below.

d. The FLRA may deem a medical emergency to continue for the purpose of providing a leave recipient adequate time within which to receive annual leave donations.

Section 15 – Restoration of Transferred Annual Leave.

a. When the medical emergency of a leave recipient terminates, any transferred annual leave remaining in the leave account of the recipient shall be restored, to the extent administratively feasible, by transfer to the annual leave accounts of leave donors currently employed by a Federal agency and subject to Chapter 63 of Title 5, U.S.C., on the date the personal emergency terminates, as provided in paragraphs b and c below.

b. The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(i) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(ii) Multiply the ratio obtained in paragraph b(i)by the number of hours of annual leave transferred by each leave donor eligible for restoration; and

(iii) Round the result obtained in paragraph b(ii) to the nearest increment of time established by the leave donor's employing agency to account for annual leave.

c. If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, then no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount the donor transferred to the leave recipient.

d. At the election of the leave donor, unused transferred annual leave restored to the leave donor under paragraph a. of this Section may be restored by –

(i) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;

(ii) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(iii) Donating such leave in whole or part to another leave recipient.

e. If a leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph (d)(iii) of this Section, then the donor may elect to have the remaining leave credited to the leave donor's annual leave account under paragraph (d)(i) or (d)(ii) of this Section.

f. Transferred annual leave restored to the account of a leave donor under paragraph (d) (i) or (d)(ii) of this Section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the restored leave is credited to the leave donor's annual leave account.

Section 16 - Prohibition of Coercion.

a. An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right the other employee may have with respect to donating, receiving, or using annual leave.

b. For the purpose of the above paragraph, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation) or effecting or threatening to effect

any reprisal (such as deprivation of appointment, promotion, or compensation).

Sonna Stampone
Executive Director

12-8-10
Date

FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE EXECUTIVE DIRECTOR/ADMINISTRATOR

WASHINGTON, D.C.

Regulations

FLRA 1322
3/10/86

SUBJECT: WHITE HOUSE AND CONGRESSIONAL CORRESPONDENCE CONTROL PROCEDURES

1. PURPOSE. This regulations sets forth Federal Labor Relations Authority (FLRA) policies and procedures governing White House and Congressional correspondence. It is intended to ensure that such correspondence is properly controlled and handled in a timely, consistent, and accurate manner.

2. COVERAGE. These procedures apply to all correspondence received from the Office of the President or an office of a Member of Congress unless the correspondence is addressed to the Chairman or a Member of the FLRA and the Chairman or Member elects to respond directly. The procedures do not apply to correspondence which is addressed to personnel within the Office of the General Counsel or the Federal Service Impasses Panel.

3. PROCEDURES.

   a. Matters Within the Jurisdiction of the General Counsel or the Federal Service Impasses Panel. When the subject matter of the White House or Congressional correspondence concerns a matter within the jurisdiction of the General Counsel or the Federal Service Impasses Panel, a response stating that the matter has been referred to the General Counsel or Panel will be prepared in accordance with the procedures set forth below. A copy of that response and the incoming correspondence will be provided by the Office of Congressional/Public Affairs to the Office of the General Counsel or the Panel, as appropriate, and receipt thereof will be acknowledged in writing. The General Counsel and the Panel will provide copies of responses to correspondence referred to them under this section to the Office of Congressional/Public Affairs.

   b. Matters Within the Jurisdiction of the Authority.

      (1) Receipt and referral. All White House and Congressional Correspondence which is not addressed

DISTRIBUTION: OPI:

to the Chairman or Member of the FLRA shall be delivered to the Office of Congressional/Public Affairs. If the correspondence is delivered to another office of the Authority, a label identifying it as "CONGRESSIONAL" or "WHITE HOUSE" shall be affixed and it shall be immediately referred by the receiving office to the Office of Congressional/Public Affairs. If it is not clearly indicated on the correspondence, the date of receipt shall be noted.

(2) Responsibilities of the Office of Congressional/Public Affairs. The Office of Congressional/Public Affairs is responsible for maintaining files of White House and Congressional correspondence processed under these procedures and the responses thereto. The Office of Congressional/Public Affairs will also monitor the preparation of responses and will advise the Executive Director/Administrator on a weekly basis concerning the status of all pending White House and Congressional correspondence. In addition, the Office of Congressional/Public Affairs will provide copies of inquiries and responses concerning policy issues to the Offices of the Chairman and the Members.

(3) Responses. The Office of Congressional/Public Affairs will complete and attach the correspondence control slip and assign responsibility for preparation of a response. Unless otherwise noted by the Office of Congressional/Public Affairs, all responses will be prepared (1) in final form, (2) within the time deadlines set forth in subsection 4, and (3) for the signature of the Executive Director/Administrator.

(4) Deadlines.

(a) Congressional correspondence will be answered within 7 workdays of receipt by the Authority unless such factors as the time necessary to gather facts or complete research require a longer period of time. If it appears that more than 7 workdays will be necessary, an adjusted due date will be discussed with the Office of Congressional/Public Affairs and an interim response will be provided immediately.

(b) All correspondence from the White House will be answered within 3 workdays of receipt by the Authority by an interim or final reply.

4. EFFECTIVE DATE. This regulation becomes effective March 31, 1986.

Jacqueline R. Bradley
Executive Director/
Administrator

FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.

REGULATIONS

FLRA 3560.1

SUBJECT: WITHIN-GRADE INCREASES AND QUALITY SALARY INCREASES

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FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE EXECUTIVE DIRECTOR

WASHINGTON, D.C.

REGULATIONS

FLRA 3560.1

06/01/82
Recertified 2/15/00

SUBJECT: WITHIN-GRADE INCREASES AND QUALITY SALARY INCREASES

CHAPTER 1 - WITHIN GRADE INCREASES

SECTION 1 - PURPOSE. The purpose of this issuance is to implement within the Federal Labor Relations Authority (FLRA) the requirement contained in Part 531, Title 5, U.S. Code, which states that an employee, who is not excluded under Section 3, below, paid at less than step 10 of the grade of his or her position shall be advanced in pay to the next higher step of that grade upon meeting the three requirements established by law:

a. The employee must have completed the required waiting period (see Section 6, below);

b. The employee must not have received an equivalent increase during the waiting period (see Section 7, below);

c. The employee's performance must be at an acceptable level of competence (see Section 5, below).

SECTION 2 - RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY.

1. First-level supervisors will normally make the initial determinations as to acceptable levels of competence for

C, M, G, F, AJ, ED, ED(E), SO, AS(F),
AG(A), CH, OA, AGF-1, tO 9, OAMD, OAMO, OCHA

employees under their immediate supervision. The decision to grant or withhold a within-grade increase for an employee must be supported by the employee's most recent performance appraisal
(see FLRA regulation 3430.1). If the most recent appraisal does not support the decision, there must be a written narrative statement setting forth the reasons for granting or withholding the within-grade increase. The failure of supervisors to maintain and use current, sound performance requirements (establishment of reasonable (attainable) job elements and performance standards) for each employee under his or her immediate supervision will be considered a negative factor in the evaluation of the supervisor's performance.

2. Second-level supervisors will normally make the decision upon a request by the employee for reconsideration upon receipt of an initial determination that a within-grade increase has been denied. The responsibilities of the reconsideration official are addressed in Section 8, below.

3. The Director of Personnel is responsible for ensuring compliance with Office of Personnel Management (OPM) and FLRA regulations and procedures, including timely notice to supervisors of due dates for determinations of level of competence, and offering counseling and/or assistance to supervisors and employees concerning statutory or procedural requirements.

SECTION 3 - SCOPE. This regulation applies to FLRA employees paid less than step 10 of their positions. This regulation does not apply to:

a. Employees covered by the merit pay system established under Chapter 54, of Title 5, U.S. Code;

b. Members of the Senior Executive Service; or

c. Individuals appointed by the President, by and with the advice and consent of the Senate.

d. Administrative Law Judges are entitled to within-grade increases; however, their performance will not be evaluated for those purposes. Employees serving under term appointments of more than one year or under temporary appointments pending establishment of a register (TAPER) are eligible for within-grade increases. Federal Personnel Manual

(FPM) Chapter 531 defines eligible employee groups. Employees whose salaries are above the statutory maximum earing limitation (i.e., the asterisked rates in the General Schedule) must have within-grade increases computed and credited upon completion of required waiting periods, including the supervisory determination as to whether the performance has been determined to be of an acceptable level of competence. The higher salary rate is to be documented on the Standard Form 50 by an asterisk and the remark, "Except for maximum earning limitation, employee's salary would be . . ."

SECTION 4 - REFERENCES. Part 531, Title 5, U.S. Code.

SECTION 5 - DEFINITIONS.

1. Acceptable level of competence is defined as a level identified by the FLRA at which the performance by an employee of the duties and responsibilities of his/her assigned position would be termed "successful" with respect to performance of all critical job elements which have been established for that particular position; and, in addition to the requirement for entitlement, warrants advancement of the employee's basic rate of pay to the next higher step of the grade. An employee whose current performance with respect to any critical element falls below the "successful" level is not performing at an acceptable level of competence for the purpose of granting a within-grade increase. Further, except for unusual circumstances, an employee whose overall performance during the waiting period is at the minimum level required for retention ("minimally satisfactory") in the position is not performing at an acceptable level of competence for within-grade increase purposes.

2. Calendar week is defined as a period of seven consecutive calendar days.

3. Critical element has the meaning of a job activity necessary to define a critical part of the work process in the position occupied.

4. Employee means an employee of the FLRA who occupies a permanent position classified and paid under the General Schedule or appropriate Wage Grade who is paid at less than the maximum step of his/her grade.

5. Equivalent increase means an increase or increases in an employee's rate of basic pay equal to, or greater than, the amount of a within-grade increase within the steps of the grade of the position occupied by the employee. See Section 7, below.

6. Permanent position means a position filled by an employee who appointment is not designated temporary by law and does not have a definite limitation of one year or less, and includes a position to which an employee is promoted on a temporary or term basis for at least one year.

7. Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

8. Scheduled tour of duty means any work schedule established for an employee in accordance with the regular procedures for the establishment of work weeks. For a full-time employee, this includes the basic 40-hour work week. For a part-time employee, this is any regularly scheduled work week of less than 40 hours during the administrative work week.

9. Waiting period means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

SECTION 6 - WAITING PERIODS.

1. Full-time employees. The length of the waiting period varies with the rates of the grade in which the employee is serving. The waiting periods are as follows:

a. The waiting period for rates 2, 3, or 4 is 52 calendar weeks of creditable service;

b. The waiting period for rates 5, 6, or 7 is 104 calendar weeks of creditable service.

c. The waiting period for rates 8, 9, or 10 is 156 calendar weeks of creditable service.

2. Part-time employees. The waiting period is the same as that outlined above when the employee has a prearranged, regularly scheduled tour of duty. For employees without such

tours of duty (regularly scheduled), a day's credit toward the wating period is given for each day in a pay status, and the waiting periods are as follows:

a. For steps 2, 3, or 4, the employee must complete 260 days in a pay status over a period of no less than 52 calendar weeks.

b. For steps 5, 6, or 7, the employee must complete 520 days in a pay status over a period of no less than 104 calendar weeks.

c. For steps 8, 9, or 10, the employee must complete 780 days in a pay status over a period of no less than 156 calendar weeks.

3. Beginning of waiting period. A waiting period for a within-grade increase begins:

a. Upon a new appointment in the Federal service.

b. After a break in service or a nonpay status (alone or in combination) in excess of 52 calendar weeks.

c. Upon receiving an equivalent increase.

A waiting period is not interrupted by nonwork days between an employee's last scheduled work day in one position and his/her first scheduled work day in a new position.

4. Affect of Temporary Promotions on Waiting Period:

a. Concurrent waiting period. A temporary promotion to a higher grade begins a waiting period for a within-grade increase in the higher grade. The waiting period for a within-grade increase in the lower grade continues to run during the period of temporary promotion.

b. Waiting period in the lower grade. If the waiting period for a within-grade increase in the lower grade is completed during the period of temporary promotion and the supervisor certifies that the employee's performance is of an acceptable level of competence, the employee's salary will include the within-grade increase upon return to the lower grade. A new waiting period in the lower grade runs from the date that the within-grade increase would have been effective

if the employee had remained in the lower grade. If the waiting period in the lower grade is not completed before the employee returns to the lower grade, it continues to run after the employee's return.

5. Temporary Promotions of one year or longer. If the waiting period for a within-grade increase in the higher grade is completed, the employee is entitled to the within-grade increase, provided the supervisor determines that the employee's performance in the higher grade is of an acceptable level of competence. If a temporary promotion runs for one year or more, the rate in the higher grade may establish a new highest previous rate. In such a case, the employee's salary rate upon return to the lower grade is fixed according to the highest previous rate rule (see FPM chapter 531). If the rate so established exceeds the rate that the employee would have received by within-grade increase in the lower grade, the employee is considered to have received an equivalent increase; therefore, the date of the change-to-lower-grade marks the beginning of a new waiting period. If the rate so established is no greater than the rate the employee would have received by within-grade increase in the lower grade, the employee is not considered to have received an equivalent increase; therefore, the waiting period in the lower grade is unaffected by the return to the lower grade.

6. Time in a Nonpay Status (LWOP). Time in a nonpay status is creditable service in the computation of a waiting period for an employee with a pre-established tour of duty when it does not exceed an aggregate of:

a. Two workweeks in the waiting period for steps 2, 3, and 4;

b. Four workweeks in the waiting period for steps 5, 6, and 7; and

c. Six workweeks in the waiting period for steps 8, 9, and 10.

Time in excess of the above in a nonpay status shall extend a waiting period by the excess amount.

SECTION 7 - EQUIVALENT INCREASE.

1. Instances in which increases in pay are not considered

equivalent increases.

An increase in an employee's rate of basic pay shall not be considered an equivalent increase when it results from the following:

a. A statutory pay adjustment including an adjustment required by section 5402(c)(3) of Title 5, U.S. Code;

b. The periodic adjustment of a wage schedule or the application of a new pay or evaluation plan under the Federal Wage System;

c. The establishment of higher minimum rates under section 5303 of Title 5, U.S. Code, or an increase in such rates;

d. A quality salary increase under section 5338 of Title 5, U.S. Code, and Subpart E of Part 531, 5 CFR.

e. A temporary or term promotion when return to the permanent grade and step; and

f. An increase resulting from placement of an employee in a supervisory or managerial position who does not satisfactorily complete a probationary period established under section 3321(a)(2) of Title 5, U.S. Code, and is returned to a position at the same grade and step held by the employee before such placement.

2. Repromotion after demotion, with salary retention. When an employee is repromoted after having been demoted with salary retention, the salary set upon repromotion constitutes an equivalent increase, and the repromotion starts a new waiting period (43 Comp. Gen. 507 and 43 Comp. Gen. 701 (1964)).

3. Prevailing rate employees who move to the General Schedule. Pay adjustments under 5 U.S. Code 5343 (pay for prevailing rate employees) are statutory and thus are not considered equivalent increases for the purpose of establishing waiting periods for within-grade increases. Therefore, prevailing rate employees who move to the General Schedule are entitled to have their service under the prevailing rate system counted toward the waiting period for a within-grade increase under the General Schedule without

regard to general pay adjustments under the prevailing rate system.

4. Employee whose salaries are above statutory limitation. When determining equivalent increases for employees whose salaries are above the statutory maximum earning limitation, the asterisked salary rate (i.e., that rate in excess of the maximum payable rate) will be used in determining whether or not an equivalent increase has been earned.

SECTION 8 - DETERMINATIONS OF LEVELS OF COMPETENCE.

1. The first-level supervisor will normally make initial determinations of acceptable levels of competence for employees under his/her immediate supervision.

2. Notice to employee. A level of competence determination (see Attachment 1) shall be communicated to an employee (in cases of either a positive or a negative determination).

a. Positive determination. Upon determination that the employee's performance warrants granting of the within-grade increase, the employee will be furnished a copy of the supervisor's certification (see Attachment 1).

b. Negative Determination. Upon a determination that the employee's performance does not warrant granting of the within-grade increase, the negative determination will be communicated – in writing – within 10 days after completion of the required waiting period. The communication will set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase. The communication will also inform the employee of his or her right to request that the appropriate designated FLRA official – an official in a higher-level position (if one exists) than the person who initially denied the within-grade increase – reconsider the negative determination.

3. Procedures for requesting reconsideration of a negative determination. An employee or an employee's personal representative may request reconsideration of a negative determination by filing – not more than 15 calendar days after receiving the notice of negative determination, a written response to the negative determination, setting forth the reasons why he or she feels that the negative determination

warrants reconsideration.

4. Extensions of the 15-Day limitation. The time limitation to request reconsideration may be extended by the reconsideration official when the employee shows he or she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the 15-day time limit.

5. Establishment of a reconsideration file. When an employee files a request for reconsideration, the reconsideration official will establish a reconsideration file. The file will contain all pertinent documents relating to the negative determination, and the request for reconsideration. The file will contain the following:

a. The written negative determination and the basis therefor;

b. The employee's written request for reconsideration;

c. The report of investigation when an investigation is made;

d. The written summary or transcript of any personal presentation made; and

e. The FLRA's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his or her personal representative with an opportunity to submit a written exception to any summary of the employee's personal presentation.

6. Disallowance of a personal representative. The reconsideration official may disallow as an employee's personal representative an individual whose activities as a representative would cause a conflict of interest of position, an employee whose release from his or her official duties and responsibilities would give rise to unreasonable costs to the Government, or an employee whose priority work assignments preclude his or her release from official duties and responsibilities.

7. Granting official time to review material. An employee in a duty status shall be granted a reasonable period of official time by his/her supervisor to review the material relied upon to support the negative determination and to prepare a response to the determination.

8. Decision upon reconsideration. The deciding official will consider the following before arriving at a decision. (i) the reasons set forth by the official who initially denied the within-grade increase; (ii) the contents of the written request for reconsideration submitted by the employee or his/her representative; (iii) the report of investigation, should such an investigation be initiated by the reconsideration official; (iv) the oral presentation made by the employee or his/her representative (if an oral presentation was made); plus any written exceptions to any summary of the employee's (or his/her personal representative's) personal presentation. The deciding official will make his or her decision preferably within 30 days, but no later than 60 days, after receiving the employee's written request for reconsideration, including the employee's written reasons as to why he or she feels the denial warrants reconsideration.

9. Instances where negative determination is not sustained upon reconsideration. When the initial negative determination is not sustained by the reconsideration official, the within-grade increase will be granted, and shall be retroactive back to the first day of the first pay period following completion of the required waiting period. The employee will be advised –- in writing –- within 5 days following the decision.

10. Instances where a negative determination is sustained upon reconsideration. When a negative determination is sustained after reconsideration, an employee shall be informed in writing, within 5 days following the decision, of the reasons for the decision and of his or her right to appeal the decision to the Merit Systems Protection Board.

11. Continuing evaluation following a negative determination. After a within-grade increase has been denied, the employee may be granted the within-grade increase at any time after a determination has been made that the employee has demonstrated sustained performance at an acceptable level of competence. The employee's performance will be evaluated as to acceptable level of competence after each 52 weeks following the original

due date for the within-grade increase. The new determination will be based on the employee's performance after the end of the original due date. If the employee's performance is at an acceptable level of competence in less than 52 weeks following the negative determination, the within-grade increase will be granted effective the day of the first pay period after the positive determination has been made. The employee will be advised –- by the deciding official –- in writing within 5 days after the decision is made to grant the within-grade increase.

SECTION 9 - EFFECTIVE DATE OF WITHIN-GRADE INCREASE. Upon an initial determination that an employee's performance is at an acceptable level of competence, the within-grade increase will be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. When, due to administrative error, oversight, or delay, a positive determination is made after the waiting period is completed, the effective date of the within-grade increase shall be retroactive to the original due date. In instances where a negative determination has not been sustained, the within-grade increase will be granted, retroactive to the original due date. Should the Merit Systems Protection Board reverse the FLRA's decision upon appeal by the employee, the within-grade increase will be granted, retroactive to the due date.

CHAPTER 2 - QUALITY SALARY INCREASES

SECTION 1 - PURPOSE. The purpose of this issuance is to implement within the Federal Labor Relations Authority the requirement contained in Part 531, Title 5, U.S. Code, which authorizes an agency to grant quality salary increases and states that such awards will provide an agency with the flexibility to recognize sustained high-quality performance at a level that substantially exceeds an acceptable level of competence by authorizing faster than normal step increases.

SECTION 2 - RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY.

1. First-line supervisor will normally make an initial determination to recommend an employee under his or her immediate supervision for a quality salary increase when he or she feels that the employee's performance is deserving of such an award (see Section 4, below).

2. Second-level supervisor will normally act as the reviewing official when employees are being recommended for quality salary increases. Recommendations will be submitted for approval, to the Executive Director for Authority employees; the Deputy General Counsel for General Counsel employees; and the Executive Director, Federal Service Impasses Panel (FSIP) for FSIP employees.

3. The Director of Personnel is responsible for ensuring compliance with Office of Personnel Management (OPM) and FLRA regulations and procedures relative to granting quality salary increases, and shall ensure the establishment of a plan for granting quality salary increases. The plan shall: (i) be as simple as practicable; (ii) provide delegation of authority to grant quality salary increases to the lowest practicable level of management; (iii) include criteria and procedures to provide for the granting of quality salary increases with reasonable consistency throughout the agency and with fairness to all employees; (iv) establish a method by which employees in the FLRA will be informed, at least annually, of the number of quality salary increases granted–by grade level; and (v) provide for appropriate instruction, guidelines, and training for supervisors and managers on the use of the authority to recommend or grant quality salary increases. Additionally, the Director of Personnel shall ensure the maintenance of records and reports required by OPM on the use of the authority to grant quality salary increases.

SECTION 3 - SCOPE. This regulation applies to FLRA employees paid at less than step 10 of their positions. This section does not apply to:

a. Employees covered by the merit pay system established under Chapter 54 of Title 5, U.S. Code;

b. Members of the Senior Executive Service; or

c. Individuals appointed by the President, by and with the advice and consent of the Senate.

d. Administrative Law Judges.

SECTION 4 - LEVEL OF PERFORMANCE REQUIRED QUALITY FOR SALARY INCREASE. To be considered for a quality salary increase, an employee must:

a. Perform the duties and responsibilities of the assigned position at a level that substantially exceeds the successful level of performance so that, when viewed as a whole, the employee's performance is at a high-level of quality; and

b. Sustain performance at that level for a period of time sufficient to conclude that such a level is characteristic of his or her performance and is expected to continue in the future.

SECTION 5 - JUSTIFICATION AND DOCUMENTATION FOR QUALITY SALARY INCREASES.

The decision to grant a quality salary increase to an employee must be supported by the employee's most recent appraisal of performance, or, when the appraisal is more than 60 days old, by a supplemental written statement setting forth the reasons for granting the quality salary increase. This documentation shall be filed in the Employee Performance Folder (EPF), maintained by the Office of Personnel.

SECTION 6 - RESTRICTIONS ON GRANTING QUALITY SALARY INCREASES.

1. A quality salary increase may not be granted to an employee who has received a quality salary increase within the preceding 52 consecutive calender weeks.

2. A quality salary increase may not be granted to an employee unless, at the time it becomes effective, he or she is expected to remain for at least 60 days in the same position or in a similar position at the same grade level in which his or her performance can be expected to continue at the same level of effectiveness.

3. When considering the granting of a quality salary increase, an employee's overall performance must be judged as substantially exceeding the "successful" level of performance, and current performance with respect to any critical element must be evaluated at least "successful."

SECTION 7 - EFFECTIVE DATE OF QUALITY SALARY INCREASE. A quality salary increase shall be effective on the first day of the first pay period following the approval date.

SECTION 8 - INSTANCES WHERE QUALITY SALARY INCREASES ARE

INAPPROPRIATE.

1. A quality salary increase may not be granted to an employee whose current performance with respect to any critical element is less than "successful."

2. The employee is nearing retirement and would benefit only for a limited period.

3. The employee is about to receive –- or just received –- a promotion, selection for which included consideration of the high-level performance the quality salary increase would recognize.

4. The employee's contribution is so significant a lump-sum payment would be more fitting recognition.

5. The employee has not been in the same position continuously for at least six months.

6. The employee has already received a quality salary increase during the preceding 52 weeks.

7. The employee is transferring to another position either within or outside the FLRA.

SECTION 9 - PROCEDURES FOR RECOMMENDING/APPROVING QUALITY SALARY INCREASES.

The supervisor will submit the recommendation (through the appropriate reviewing official) to the Executive Director for Authority employees, the Deputy General Counsel employees, and the Executive Director, Federal Service Impasses Panel (FSIP) for FSIP employees, for approval. The Office of Personnel will review the approved request as to technical sufficiency and process the award.

This regulation is effective June 1, 1982.

s/

James J. Shepard
Executive Director

3560.01
06-01-82

ATTACHMENT 1

FEDERAL LABOR RELATIONS AUTHORITY SUPERVISORS'S CERTIFICATION Determination as to Level of Competence for Within-Grade Increase	INSTRUCTIONS Within-grade increases will be granted only to employees whose work entitles them to such recognition. Guidelines are contained in the appropriate FLRA Personnel Manual Chapter. Supervisors are cautioned to read these instructions prior to the completion of the certification.

PART ONE (To be completed by the Personnel Office)

1. Name (Caps) Last, First Middle		2. Title and Grade	
3. Effective Date	4. Date of Last Equivalent Increase	5. Current Salary Rate	6. Merit Scheduled Salary Rate

PART TWO - DETERMINING OFFICIAL'S CERTIFICATION (COMPLETE "A" OR "B")

A [or \ B

Determining that work is of an acceptable level of competence

I have personally considered the work of the above named employee in terms of the critical elements of his position and I certify the employee's work to be of an acceptable level of competence within the meaning of that term in Section 4302. Title V, USC.

DATE	OFFICIAL MAKING THE DETERMINATION	TITLE

Determination that work is NOT of an acceptable level of competence

I have personally considered the work of the above named employee in terms of the critical work elements of his position, and I certify that it is not of an acceptable level of competence to establish eligibility for a within-grade increase under provisions of Section 4302, Title V, USC.

I further affirm that I explained the degree of performance expected under terms of the critical work elements of the employee's position to enable such employee to qualify for a within-grade increase under the above statutory provisions.

I have advised the employee, in writing (copy of letter is attached) relative to the denial of his/her within-grade increase. The letter sets forth the reasons supporting the determination, and advising the employee of his or her right to request reconsideration of this decision.

DATE	OFFICIAL MAKING THE DETERMINATION	TITLE

INSTRUCTIONS FOR DISPOSITION FOR THIS FORM: If the employee's performance has been deermined to be of an acceptable level of competence, please complete Part A of this form, and return it to the Office of Personnel. If the employee's performance has been determined not to be of an acceptable level of competence, please complete Part B of this form; prepare a letter to the employee (please refer to FLRA regulation 3560.1, entitled: Within-grade Increases and Quality Salary Increases), notifying the employee of the denial); and forward this form, plus a copy of the letter to the employee, to the Office of Personnel.

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ATTACHMENT 2

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424-0001

SAMPLE LETTER OF NEGATIVE DETERMINATION AS TO LEVEL OF ACCEPTABLE PERFORMANCE

Dear _____:

The Federal Labor Relations Authority is required by Office of Personnel Management regulations – 5 Code of Federal Regulations, Part 531, "Pay under the General Schedule") to determine whether an employee has performed at an acceptable level of competence before the employee may receive a within-grade increase. After carefully considering your performance for the period from _____ through _____, I have determined, based on my observations, and an evaluation of your work performance during the period cited, that your performance has not been at an acceptable level of competence; therefore, I am denying your within-grade increase. This negative determination is based on the following observations and analyses of your work performance:

(List here the specifics relative to the unacceptable performance which gave rise to the negative determination)

You have the right to request reconsideration of this negative determination from (designated higher-level official), (exact mailing address). Any request for reconsideration may be made in writing by either you or your representative not more than fifteen (15) calendar days after receipt of this letter of determination. The request for reconsideration must set forth the reasons on which you base your request.

Sincerely,

(Signature of immediate supervisor–
initial deciding official)

ATTACHMENT 3

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, D.C. 20424-0001

SAMPLE LETTER OF INSTANCE WHEREIN
NEGATIVE DETERMINATION IS NOT SUSTAINED

Dear _____:

I have carefully reviewed the contents of the letter to you dated _____ wherein you were advised of the denial of your next within-grade increase, and the reasons therefor. Additionally,
I have considered the personal presentation conducted before me by (either the employee or his/her representative) at (location) on (date), including the written summary of that oral presentation (if an oral presentation was made). Your (or your representative's) written exception to the written summary of the oral presentation has also been considered with respect to your request for reconsideration.

Based on my thorough review and evaluation of documentation noted above, as well as the substance of your (or your representative's) oral presentation, I have determined that your level of performance warrants granting of your next within-grade increase. The effective date of your next within-grade increase will be (the original due date).

Sincerely,

(Signature of
reconsideration official)

ATTACHMENT 4

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, D.C. 20424-0001

SAMPLE LETTER WHERE NEGATIVE DETERMINATION
IS SUSTAINED UPON RECONSIDERATION

Dear _____:

I have carefully reviewed the contents of the letter to you dated _____, wherein you were advised of the denial of your next within-grade increase, and the reasons therefor. Additionally, I have carefully considered the contents of your request for reconsideration – submitted by you (or your representative), dated _____. The personal presentation (if one was conducted) before me by (either the employee or his/her representative) has been taken into consideration in rendering this determination. Additionally, I have considered the written exceptions (if such exceptions were submitted) made by (employee or his/her representative) to the written summary of the oral presentation (if an oral presentation was made).

Based on my thorough review and evaluation of the documentation noted above, as well as the personal presentation, I have made the decision to sustain the initial negative determination, thereby denying your within-grade increase. My decision is based on the following:

(address specific reasons for sustaining the denial, including references to the following:

1. The written negative determination and the basis therefor;

2. The employee's written request for reconsideration;

3. The report of investigation if such an investigation was conducted;

4. The written summary or transcript of any personal presentation made.

5. Any exceptions submitted by the employee or his/her representative to the written summary or transcript of any personal presentation.

You have the right to appeal this decision to the Merit Systems Protection Board (MSPB). The rules and regulations of the MSPB are attached (dated _____). You should pay particular attention to Part 1201 - Appendix I, of those regulations with respect to specific information you must provide, to MSPB should you choose to appeal this decision. Any appeal to the MSPB should be submitted to the following address (cite the appropriate regional office of MSPB) -- no later than 20 calendar days following receipt of this letter:

Merit Systems Protection Board
(address of the appropriate regional office)

Sincerely,

(Reconsideration official's name & title)

ATTACHMENT 5

TIMEFRAME FOR ACTIONS
RELATING TO WITHIN-GRADE INCREASES

1.	Determination as to level of competence.	within-grade increase is due. Additionally, if the determination is negative, the supervisor must cite specific deficiencies and advise the employee of right (and timeframe) for requesting reconsideration (reconsideration request must be in writing).
2.	Requesting reconsideration of a negative determination.	Must be submitted by employee (or representative in writing, stating specifics as to why employee feels the determination should be reconsideration, it must be submitted within 15 days of receipt of negative determination.
3.	Amount of official time allowed for the employee (or representative) to review material and prepare his/her reconsideration request.	A reasonable amount of official time as determined by the supervisor.
4.	Decision upon reconsideration.	Must be in writing, preferably within 30 days but no later than 60 days after receipt of employee's request for reconsideration. If the decision is positive, the WIG will be retroactive to original due date. If sustained, the notice will advise employees of reasons for sustaining the action, plus the deciding officials consideration of the employees oral presentation (if one was

Due to the employee by the end of the pay period in which the

		the written transcript or summary of his/her oral presentation. Also, the notice must advise employee of his/her right to appeal the decision to MSPB, and must enclose MSPB's regulations.
5.	Appeal to MSPB of negative determination.	Must be submitted by employee no later than 20 days after receipt of the sustained determination. Employee must use certified mailing or deliver it to MSPB in person.
6.	Subsequent determination.	After a denial, employee may be granted a WIG at any time within next 52-week period (must be reviewed at end of 52-week period if not granted before then. If decision is positive, WIG will be effective first day of first pay period following decision. New determination to be based on performance following the end of the original due date.

made) as well as any written objection that employee may have submitted relative to

WORK SCHEDULE SELECTION FORM

This work schedule selection form is to be used in conjunction with FLRA Instruction 3640. The supervisor and the employee are encouraged to discuss informally the impact of the proposed work schedule on work requirements.

PART I – To be completed by the Employee:

1. Date request submitted _____
2. Employee Name _____
3. Name of Immediate Supervisor _____
4. Office _____
5. Check type of work schedule desired.

   a. Fixed Schedule

   ☐ 1. Compressed
   ☐ 2. Fixed Tour

   b. Flexible Schedule

   ☐ 1. Gliding
   ☐ 2. Variable Day

6. Indicate specific days and hours of work schedule desired for 1st and 2nd week.

Fixed Schedule

1. 1st Choice - 1st Week

   _____

   2nd Week

   _____

2. 2 nd Choice - 1st Week

   _____

   2nd Week

   _____

PART II – To be completed by the supervisor:

1. ☐ Approved
2. ☐ Approved with modifications

3. ☐ Disapproved (Provide reason for disapproval)

PART III – Effective Date:

This work schedule will take effect on _____ .

_____

Employee

_____

Supervisor

Authority Decisional Component Drafting Guide

(Updated March 5, 2014)

Table of Contents

§ 1 Introductory Notes

1.1 *Bluebook* References

All *Bluebook* references are to the Nineteenth Edition (2010).

Note on the *Bluebook*: Because we are putting citations in footnotes, if you need a quick reference, then you may now use "Quick Reference: Law Review Footnotes" located on the *Bluebook*'s first page and front cover. You may also use "Quick Reference: Court Documents and Legal Memoranda" located on the *Bluebook*'s last page and back cover (but use italics rather than underlining). For another quick reference, consult the tips for practitioners located in the "Bluepages," beginning on page 3 of the *Bluebook*.

1.2 Purpose

The Authority Drafting Guide is intended primarily to capture the formatting, style, citation, and quotation practices used by the Authority Decisional Component. Anything marked with yellow highlighting represents a change to the Authority's current practice. In some instances, a change brings an existing practice into conformance with the *Bluebook*. In other instances, the change establishes a consistent rule where there had not been one. Some changes eliminate formatting differences between issued decisions and dual-column, published decisions to ease the conversion process. Further, some changes reduce "fighting" the default settings in Microsoft (MS) Word. *E.g.*, Authority Drafting Guide Rule 2.25. Finally, some changes incorporate new approaches to decision writing adopted by the Members as a result of the decision-writing initiative, *see, e.g.*, Authority Drafting Guide Rules 2.3 and 2.5(b), and one change responds to an additional issue that arose in connection with that initiative, *see* Authority Drafting Guide Rules 3.11(e)(1) and 3.11(e)(2).

1.3 Secondary Sources and Conflicts

The Authority generally follows the *Bluebook* where it applies. The Government Printing Office (GPO) Style Manual, available online at http://www.gpoaccess.gov/stylemanual/index.html and the *Chicago Manual of Style* are acceptable secondary sources for matters not covered by this Drafting Guide or the *Bluebook*. Where there are conflicts among this Drafting Guide, the *Bluebook*, the GPO Style Manual, or the *Chicago Manual of Style*, use the following order of authority for reference:

1. Authority Drafting Guide
2. The *Bluebook*
3. GPO Style Manual
4. *Chicago Manual of Style*

1.4 Sources That Don't Follow Guide

For consistency, when quoting a source that does not follow an Authority Drafting Guide rule, alter the quotation using brackets and ellipses to follow the Authority rule.

Ex.:	The Arbitrator found that "the [g]rievant established that [three] of the disciplinary actions against him were discriminatorily motivated." (Authority Drafting Guide Rules 2.19(c) and 2.14(a)).
Not this:	The Arbitrator found that "the Grievant established that 3 of the disciplinary actions against him were discriminatorily motivated."
Ex.:	The parties stipulated to the following issue: "whether [the Agency] violated the [parties' agreement] when it disciplined the grievant." (Authority Drafting Guide Rules 2.12(c) and 2.17(e)).
Not this:	The parties stipulated to the following issue: "whether Customs violated the 2010 National Agreement when it disciplined the grievant."
Exception:	Generally, in a negotiability proceeding, do not alter the wording of the proposals or provisions that are in dispute in order to conform to the Authority Drafting Guide.

1.5 Application of Rules

Authority Drafting Guide rules apply to both issues memoranda (IMs) and decisions, unless otherwise noted.

1.6 Plain Writing

This Guide encourages "plain writing" where feasible.

1.7 Issues Not Addressed

When facing a style or citation problem not addressed by this Guide, or when the correct style or citation format makes the sentence difficult to read, consider drafting around the issue (and avoiding the problem) by restructuring the sentence or citation.

§ 2 Formatting and Style

2.1 Format of IMs and Decisions

(a) *Arbitration, unfair-labor-practice (ULP), and representation cases.* Generally, after the pertinent heading/case caption, IMs and decisions in arbitration, ULP, and representation cases should be organized as follows:

1. A "Statement of the Case" section that includes a "deep-issue" statement. For a discussion of deep-issue statements, see Bryan A. Garner, *Advanced Legal Writing & Editing* 47-73 (2011); Bryan A. Garner, *Advanced Judicial Writing* 5-17 (2007).
2. A section that summarizes the background and the relevant decision-maker's (arbitrator's, Administrative Law Judge's, or Regional Director's) decision.
3. A "Preliminary Matter(s)" section, if there are any preliminary matters at issue in the case.
4. An "Analysis and Conclusions" section. Authority Drafting Guide Rule 2.6(d).
5. A section that sets forth the recommended disposition or overall disposition of the case. In IMs, this is labeled "Overall Recommendation(s)"; in decisions and orders, it is labeled "Decision" or "Order," as appropriate in the particular case.

Note: IMs and decisions will no longer contain a separate "Positions of the Parties" section, and IMs will no longer contain a separate "Statement of the Issues" section.

(b) *Negotiability cases.* Generally, after the pertinent heading/case caption, IMs and decisions in negotiability cases should be organized as follows:

1. A "Statement of the Case" section that includes a "deep-issue" statement.
2. A "Background" section, if the background is relevant.
3. A "Preliminary Matter(s)" section, if there are any preliminary matters at issue in the case.
4. A section where the heading is the name and number of the proposal or provision at issue (e.g., "Proposal 1"). If the same legal analysis applies to more than one proposal or provision, then the heading should list all of the proposals or provisions discussed in that section. And within the fourth section, the subheadings generally should be in the following order:
    A. Wording
    B. Meaning
    C. Analysis and Conclusions

The organization for the fourth section should then be repeated for each proposal or provision, or grouping of proposals or provisions, at issue in the case.

5. A section that sets forth the recommended disposition or overall disposition of the case. In IMs, this is labeled "Overall Recommendation;" in decisions, it is labeled "Order."

(c) *Departures from format.* Individual cases may warrant a departure from these formats. Whether a case warrants a departure should be worked out in discussions between the drafting attorney and his or her supervisor, manager, and/or Member.

2.2 References to the Authority

(a) *Use "Authority," not "FLRA."* Generally, do not refer to "the Authority" as "the FLRA" in IMs and decisions.

Ex.: The Authority has held . . .
Not this: The FLRA has held . . .

Ex.: Authority case law holds . . .
Not this: FLRA case law holds . . .

(b) *Use of "we."* When referring to the instant case, use "we" in place of "the Authority." "We" generally refers to the Authority's current Members.

Ex.: Because the Agency failed to request leave to file its supplemental submission, we will not consider it.
Not this: Because the Agency failed to request leave to file its supplemental submission, the Authority will not consider it.

But when stating general standards of Authority case law, use "the Authority," not "we."

Ex.: The Authority has denied requests to consider a supplemental submission that raises an issue that the party could have raised in a previous submission.
Not this: We have denied requests to consider a supplemental submission that raises an issue that the party could have raised in a previous submission.

2.3 Passive Voice. In the "Decision" and "Order" sections of decisions, use active voice, not passive voice.

Ex.: We deny the Union's exceptions.
Not this: The Union's exceptions are denied.

Ex.: We dismiss the petition for review.
Not this: The petition for review is dismissed.

Ex.: We dismiss the complaint.
Not this: The complaint is dismissed.

2.4 Case Captions and Decision Titles

(a) *Case captions.* Case captions in Authority decisions are bolded and in all caps. Caption spacing, wording, and sequence should mirror the Authority's statement of service, which is located on the first right-hand-side tab of the work file. If you have a question about the caption's accuracy, then please contact Case Intake and Publication (CIP) staff.

(b) *Decision titles.* The decision title (e.g., "Decision," "Order Dismissing Exceptions," "Decision and Order") depends on the case type and the overall disposition of the case. For a list of appropriate decision titles and descriptions of their uses, see Authority Drafting Guide, Appendix A, *Case Captions: Decision Titles.*

But where there is only one exception, make sure that references to the exception take the singular form.

Ex.:

ORDER DISMISSING EXCEPTION

2.5 Member Lines and Separate Opinions

(a) *Member lines.* The Members determine Member lines whenever the membership of the Authority changes. You must use the exact agreed-upon wording and spacing. Member lines should be in bold and centered under the case caption.

Ex.:

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members

(b) *Notation of separate opinions.* Note separate opinions in the case caption of decisions, rather than in a footnote.

Ex.:

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members
(Member Pizzella concurring)

(c) *Page numbering.* Page numbering for a separate opinion is continuous with the page numbering from the majority opinion.

Ex.: If the majority opinion ends on page 12, then the separate opinion starts on page 13.

(d) *Stand-alone document.* Separate opinions are considered stand-alone documents. As such, they may not rely on any defined terms or short cites from the majority opinion.

(e) *Footnote numbers.* Footnote numbering in a separate opinion is *not* continuous with the footnote numbering in the majority opinion.

Ex.: The first footnote in a separate opinion is footnote 1. And if there is only one footnote, then it is indicated with an asterisk (*). *See* Authority Drafting Guide Rule 2.10(e).

(f) *Appendixes.* If the majority opinion has an appendix, then the separate opinion starts on the page *following* that appendix. Where there is no appendix, separate opinions start on the page following the majority decision. *See* Authority Drafting Guide Rule 2.5(c).

(g) *Internal citation to majority and separate opinions.* When the majority and separate opinions cite to each other, cite to the page numbers in the slip opinions (i.e., the decisions circulated among the Member staffs).

Ex.: Majority at 6.
Ex.: *See* Dissent at 12.

2.6 Headings

(a) *Format of Roman-numeral headings.* In order to maintain consistency with the headings in published Authority decisions, Roman-numeral headings should be bolded, not underlined. Subheadings should *not* be bolded or underlined.

Ex.:

III. Analysis and Conclusions

A. The award is not based on nonfacts.

B. The Arbitrator did not exceed his authority.

Not this:

III. <u>Analysis and Conclusions</u>

A. <u>The award is not based on nonfacts</u>.

B. <u>The Arbitrator did not exceed his authority</u>.

(b) *Parallel structure.* Headings should follow parallel structures within a Roman numeral. If headings at a particular level (e.g., Roman numeral, capital letter, etc.) are complete sentences, then all headings at that level should be complete sentences.

Ex.:

III. Preliminary Matters

A. The exceptions are not interlocutory.

B. The Authority will not consider the Union's supplemental submission.

IV. Analysis and Conclusions

A. The award is not based on nonfacts.

B. The Arbitrator did not exceed his authority.

(c) *Hybrid headings.* Avoid using hanging, non-numbered headings. If one of your Roman-numeral headings would have only one capital letter heading, then combine the two using a hybrid heading. Capitalize the part of the heading that is not a complete sentence using the heading-capitalization rules, *see* Authority Drafting Guide Rule 2.6(g)(1), and apply sentence-capitalization rules for the part of the heading that is a complete sentence, *see* Authority Drafting Guide Rule 2.6(g)(2).

Ex.:

III. Analysis and Conclusion: The award is contrary to law.

Not this:

III. Analysis and Conclusion

The award is contrary to law.

Ex.:

III. Preliminary Matter: Sections 2429.5 and 2425.4(c) of the Authority's Regulations bar the Union's exception.

Not this:

III. Preliminary Matter

Sections 2429.5 and 2425.4(c) of the Authority's Regulations bar the Union's exception.

(d) *Use "Analysis and Conclusions" in IMs and decisions*. For consistency between IMs and decisions, use "Analysis and Conclusions" as the Roman-numeral heading above the discussion of the merits in *both* IMs *and* decisions. Note the use of "and" rather than "&."

(e) *Headings in IMs.* Headings in the "Analysis and Conclusions" section of IMs should be phrased as questions.

Ex.: A. Is the award contrary to the Back Pay Act?
Not this: A. Whether the award is contrary to the Back Pay Act.

Ex.: B. Did the Arbitrator exceed her authority?
Not this: B. Whether the Arbitrator exceeded her authority.

(f) *Phrase decision headings as conclusions.* Headings in *decisions* must be phrased as affirmative statements of conclusions, not as issue statements or questions.

Ex.: A. The award is contrary to the Back Pay Act.
Ex.: B. The Arbitrator did not exceed her authority.

(g) *Heading capitalization.*

1. *Headings that are not complete sentences.* If a heading is not a complete sentence, then it should follow heading-capitalization rules. In general, capitalize all words in a heading or title, including the initial word and any word that immediately follows a colon. But do not capitalize articles, conjunctions, or prepositions when they are four or fewer letters, unless they begin the heading or title, or immediately follow a colon. *See Bluebook* Rule 8(a).

Ex.: **I. Statement of the Case**
Ex.: **III. Analysis and Conclusions**

2. *Headings that are complete sentences.* If a heading is a complete sentence, then do not apply heading-capitalization rules, and end the sentence with a period.

Ex.: B. The award is contrary to the Back Pay Act.
Ex.: C. The Arbitrator did not exceed her authority.

3. *Hybrid headings.* When using a hybrid heading, *see* Authority Drafting Guide Rule 2.6(c), capitalize the part of the heading that is not a complete sentence using the heading-capitalization rules, *see* Authority Drafting Guide Rule 2.6(g)(1), and apply sentence-capitalization rules for the part of the heading that is a complete sentence, *see* Authority Drafting Guide Rule 2.6(g)(2).

Ex.:
III. Analysis and Conclusion: The award is contrary to law.

Ex.:
III. Preliminary Matter: Sections 2429.5 and 2425.4(c) of the Authority's Regulations bar the Union's exception.

(h) *Exceptions on same ground resolved differently.* If multiple exceptions on the same ground are resolved differently, then the overall heading should state "in part."

Ex.: If an award is not contrary to § 7106, but is contrary to the Fair Labor Standards Act (FLSA), then the heading should state: "The award is contrary to law in part."

III. Analysis and Conclusions
A. The award is contrary to law in part.
1. The award is not contrary to § 7106 of the Statute.
2. The award is contrary to the FLSA.

(i) *Preliminary matters.* "Preliminary Matter(s)" sections usually require their own Roman numeral and generally should precede the "Analysis and Conclusions" section. Authority Drafting Guide Rules 2.1(a)(3) and 2.1(b)(3); *see also* Authority Drafting Guide Rules 2.6(c), 2.6(g)(1), and 2.6(g)(2). Preliminary matters are procedural issues that the Authority must resolve before it can consider the merits of a claim, for example: whether the Authority's Regulations bar consideration of arguments, whether filings are timely, whether the Authority has jurisdiction, whether exceptions are interlocutory, and whether the Authority should consider filings. But, generally, denying an exception on the merits, rather than dismissing it, is *not* a preliminary matter.

Ex.: Do §§ 2429.5 and § 2425.4(c) of the Authority's Regulations bar the Agency's contrary-to-law argument? (IM)
Ex.: Sections 2429.5 and 2425.4(c) of the Authority's Regulations do not bar the Union's essence exception. (decision)
Ex.: Is the Agency's opposition timely? (IM)
Ex.: The Union's exceptions are timely. (decision)
Ex.: Does the Authority have jurisdiction over the exceptions? (IM)
Ex.: The Authority does not have jurisdiction over the exceptions. (decision)
Ex.: Is the arbitration award final? (IM)
Ex.: Are the Union's exceptions interlocutory? (IM)
Ex.: The Agency's exceptions are not interlocutory. (decision)
Ex.: Should the Authority consider the parties' supplemental submissions? (IM)
Ex.: We will not consider the Union's supplemental submission. (decision)

(j) *Exceptions resolved entirely on procedural grounds.* When a case is disposed of entirely on one or more procedural grounds, address otherwise-preliminary matters in the "Analysis and Conclusions" section. *See also* Authority Drafting Guide Rules 2.6(c), 2.6(g)(1), and 2.6(g)(2).

Ex.:
III. Analysis and Conclusions: The exceptions are interlocutory.

(k) *Do not "orphan" headings or sub-headings*. Any heading or sub-heading at the bottom of a page should have at least two lines of corresponding text below it on the same page.

2.7 Font, Margins, and Spacing

(a) *Font.* The font for IMs and decisions is Times New Roman. The font size for main text is 12-point, and 10-point for footnote text.

(b) *Margins and indentations.* Margins are 1" top and bottom, and 1.25" right and left.

(c) *Character spacing.* Use two spaces after periods, question marks, and colons; use one space after semicolons. Use 1" indentations (tabs) at the beginning of paragraphs and between heading letters/numbers and text.

(d) *Paragraph spacing.* IMs and decisions should be single spaced. Paragraphs should be separated with a single, blank line. This rule also applies to block quotations; there should be a single, blank line above and below a block-quote paragraph, unless the block quote appears in a footnote. *See* Authority Drafting Guide Rules 2.10(b) and 4.2(a).

(e) *Avoid extra returns.* Delete extra returns at the top of a page. The first line of text on a page should appear at the top of the page. Pay special attention to this rule when using a manual (hard) single return between paragraphs, and adjust spacing so that the first line of every page contains text.

(f) *Section symbol (§).* Whenever a section symbol (§) is used, use a nonbreaking space between the symbol and section number, but no spaces between subsections.

Ex.: 5 U.S.C. § 7106(a)(2) – space between "§" and "7106," but no spaces between "7106," "(a)," and "(2)."

2.8 Nonbreaking Space (CTRL+SHIFT+SPACE). Certain pairs of words, symbols, and numbers should not be broken up at the end of a line. To avoid leaving these words, symbols, and numbers "hanging," use the "nonbreaking" space rather than a regular space.

(a) *How to insert a nonbreaking space.*

- Hit CTRL+SHIFT+SPACE in place of a regular space between inseparable items.
- If you do this to correct an already-hanging phrase, then make sure the nonbreaking space *replaces* the regular space. You may need to delete the regular space after you insert the nonbreaking space.

(b) *What should be kept together*.

1. "at" + page number

   Ex.: *id.* at 14 – no break between "at" and "14"

2. The first numeral (e.g., volume number, title number) in a citation + source designation

   Ex.: 66 FLRA 45, 56 – no break between "66" and "FLRA"
   Ex.: 5 C.F.R. § 2429.5 – no break between "5" and "C.F.R."

3. Other numerals not in citations + the word following that numeral

   Ex.: 180 days – no break between "180" and "days"

4. Section symbol (§) + numeral

   Ex.: § 7116(a) – no break between "§" and "7116(a)"

5. "Article" or "Section" + numeral

   Ex.: Article 47 – no break between "Article" and "47"
   Ex.: Section 5 – no break between "Section" and "5"

6. In a series of phrases enumerated using "(a); (b); (c) . . . ," or "(1); (2); (3) . . . ," the letter or number (e.g., (a) or (1)) + the word following that letter or number

   Ex.: The Arbitrator found that the Agency violated the collective-bargaining agreement when it failed to: (1) inform all employees about available overtime assignments; (2) allocate overtime assignments fairly; and (3) retain overtime records.

   Not this: The Arbitrator found that the Agency violated the collective-bargaining agreement when it failed to: (1) inform all employees about available overtime assignments; (2) allocate overtime assignments fairly; and (3) retain overtime records.

7. The month + day of a date

   Ex.: November 21, 2007 – no break between "November" and "21," but a break between "21," and "2007" is acceptable

8. "Local" + the local's alphanumeric or numeric designation

   Ex.: NAGE, Local R14-87 – no break between "Local" and "R14-87"
   Ex.: AFGE, Local 12 – no break between "Local" and "12"

9. The first word of a two-word defined term containing letters or numerals + the letter or numeral

   Ex.: Employee 1 – no break between "Employee" and "1"
   Ex.: Specialist A – no break between "Specialist" and "A"

10. In a citation, the first part of a two-word abbreviation for a court + "Cir."

    Ex.: (D.C. Cir. 1986) – no break between "D.C." and "Cir."
    Ex.: (2d Cir. 2004) – no break between "2d" and "Cir."

11. *Hyphens.* Do not end a line with a hyphen. Instead, use a nonbreaking hyphen (CTRL+SHIFT+HYPHEN).

Ex.: In a ruling the parties do not dispute, the Arbitrator found that the Agency did not violate the Statute's unfair-labor-practice provisions because the parties' agreements were . . . .

Not this: In a ruling the parties do not dispute, the Arbitrator found that the Agency did not violate the Statute's unfair-labor-practice provisions because the parties' agreements were . . . .

12. Ellipses cannot be broken, but a complete ellipsis may begin or end a line.

Ex.: The Arbitrator directed the parties to "memorialize . . . the policy for future reference."

Not this: The Arbitrator directed the parties to "memorialize . . . the policy for future reference."

Ex.: The Arbitrator found that "the [g]rievant's . . . performance evaluation was incomplete."

Not this: The Arbitrator found that the "the [g]rievant's . . . performance evaluation was incomplete."

13. If you have a title + *last name* (e.g., Arbitrator Jones, Judge Jones, Member Jones), the title and last name must be kept together on the same line. But if you have a title + *full name* (Arbitrator John A. Smith), the title can hang on the end of a line, but the full name must be kept intact on one line.

Ex.: The Agency cites the dissenting opinion of Member Armendariz in . . .

Not this: To support its exception, the Agency cites the dissenting opinion of Member Armendariz in . . .

Ex.: This matter is before the Authority on exceptions to a merits award and a remedy award of Arbitrator Kathy T. Fragnoli.

Not this: This matter is before the Authority on exceptions to a merits award and a remedy award of Arbitrator Kathy T. Fragnoli.

(c) *What does not need to be kept together.*

1. *Signals.* Because the published decisions of many courts leave signals (e.g., "*see*," "*cf.*," "*see also*") hanging at the end of a line, and the *Bluebook* does not forbid doing so, leaving a signal at the end of the line is permissible.

2. *Non-consecutive page numbers.* It is permissible to leave a page number at the end of a line if it is followed by a comma (,).

Ex.: *See, e.g., U.S. Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990).

2.9 Page Numbers. Page numbers should be centered at the bottom of the page in Times New Roman, font size 12. There should be no page number on the first page of an IM or decision. For page-numbering rules regarding separate opinions, see Authority Drafting Guide Rule 2.5(c).

2.10 Footnotes

(a) *Font.* Footnote text should be Times New Roman, font size 10.

(b) *Spacing.* Footnotes should be single-spaced, with no blank spaces between paragraphs within a single footnote or between footnotes. There should be one space between the footnote number and the text, which is the MS Word default.

Ex.:
[22] *U.S. Dep't of the Army, Military Traffic Mgmt. Command, Alexandria, Va.,* 60 FLRA 390, 394 (2004).
[23] *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 961 (1997).
[24] *Id.* at 961.
[25] *Id.*
[26] RD's Decision at 12.
[27] Union's Application at 6-10.
[28] *Id.* at 10.
[29] Agency's Opp'n at 4-6.
[30] *U.S. Dep't of the Army, Army Materiel Command, Headquarters, Joint Munitions Command, Rock Island, Ill.*, 62 FLRA 313, 317 (2007); *see also U.S. Dep't of VA, Gulf Coast Veterans Health Care Sys., Biloxi, Miss.*, 64 FLRA 452, 456 (2010) (remanding where RD did not examine each of the appropriate-unit criteria, and the record did not provide a sufficient basis for determining whether proposed units were appropriate); *U.S. Dep't of the Army, U.S. Army Reserve Command, Fort McPherson, Ga.*, 57 FLRA 95, 97 (2001) (remanding where, among other things, RD "did not discuss" certain relevant evidence "or address how it should be weighed relative to the record evidence that she did discuss"); *Dep't of the Navy, Naval Computer & Telecomms. Area, Master Station – Atl., Base Level Commc'ns Dep't, Reg'l Operations Div., Norfolk, Va., Base Commc'ns Office – Mechanicsburg*, 56 FLRA 228, 230 (2000) (remanding where RD "did not separately evaluate and make explicit findings with respect to each of" the appropriate-unit criteria).

(c) *Substantive footnotes.* Avoid substantive footnotes whenever possible.

(d) *Footnote number and all footnote text on same page.* The text of a single footnote should not span more than one page. Keep all footnote text on the page where the footnote number appears in the IM/decision text.

How To Do This:
Highlight the footnote text, right click, select "Paragraph," select the "Line and Page Breaks" tab, and check the box labeled "Keep lines together." In addition, if the footnote contains multiple paragraphs, check the box for "Keep with next" to avoid splitting the paragraphs across pages.

(e) *Single footnotes.* Where there is only one footnote in a decision or a separate opinion, use an asterisk (*) rather than a number.

Ex.: [*] Judge's Decision at 11.

(f) *Block quotations.* For footnotes appearing at the end of block quotations, see Authority Drafting Guide Rule 4.2(c).

2.11 Quotation Marks. Use MS Word's "smart" (curved) quotation marks and apostrophes.

How To Do This:
Delete any straight quotation marks (") or apostrophes (') and then re-type them. MS Word should automatically format the newly typed quotation marks (" ") or apostrophes (') "smart" (curved).

Ex.: The Agency argues that the Arbitrator's analysis "is based on a nonfact."
Not this: The Agency argues that the Arbitrator's analysis "is based on a nonfact."

2.12 Proper Names

(a) *Avoid proper names.* Generally, other than the Arbitrator, do not identify individuals involved in the case by name. For example, even where the award provides the grievant's name, we refer to the grievant as "the grievant."

(b) *Arbitrators' names.* For the definitive spelling of the Arbitrator's name, refer to the statement of service, which is located on the first right-hand-side tab of the work file. Do not include designations such as Ph.D., Dr., or J.D.

(c) *Using party designations from case caption in text.* Do not repeat party names in the text of the decision unless there are multiple parties in the case caption with the same designation (e.g., Charging Party, Respondent), or if there is a specific reason for doing otherwise (for example, when an agency files on behalf of an activity, and it would be confusing to refer to "the Agency"). Rather, refer to the parties as they are defined in the case caption.

Ex.: The Union filed exceptions to the award . . . .
Not this: NFFE, Local 3 filed exceptions to the award . . . .

But: This case involves nine charging parties who allege that NATCA violated § 7114(a)(1) and § 7116(b)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), and one charging party who alleges that the FAA violated § 7116(a)(1) and (8) of the Statute.

Here, use names because NATCA and FAA are both identified as Respondents in the case caption.

2.13 Dates. Do not use specific dates unless they are relevant or necessary.

Ex.: The grievant missed three days of work without contacting his supervisor. Upon his return to work, the Agency disciplined him.
Not this: The grievant missed work on September 7-9, 2007. On September 10, the grievant returned to work, and the Agency disciplined him.

2.14 Numerals

(a) *When to spell out.* Spell out the numbers zero to ninety-nine in text and in footnotes, but use numerals for larger numbers. *See Bluebook* Rule 6.2(a).

Ex.: Accordingly, the RD concluded that the three positions should be included in the nonprofessional-consolidated unit. *Id.*
Not this: Accordingly, the RD concluded that the 3 positions should be included in the nonprofessional-consolidated unit. *Id.*

Ex.: Among other things, the reorganization resulted in the transfer of over 350 employees who were members of the bargaining unit to other Agency components.
Not this: Among other things, the reorganization resulted in the transfer of over three hundred fifty employees who were members of the bargaining unit to other Agency components.

(b) *Do not begin textual sentences with numerals.* Avoid beginning textual sentences with numerals; spell out the number instead.

Ex.: Eight employees filed grievances alleging that . . . .

And for references to the Code of Federal Regulations and the U.S. Code, place "Title" in front of the numeral.

Ex.: Title 5, § 2422.31 of the Code of Federal Regulations states, in pertinent part: . . . .
Not this: 5 C.F.R. § 2422.31 states, in pertinent part: . . . .
Not this: Five C.F.R. § 2422.31 states, in pertinent part: . . . .

Ex.: Title 5, § 2301(b)(5) of the U.S. Code states: . . . .
Not this: 5 U.S.C. § 2301(b)(5) states: . . . .
Not this: Five U.S.C. § 2301(b)(5) of the U.S. Code states: . . . .

(c) *When to use a hyphen.* Use a hyphen between the words of a spelled-out number that is between twenty-one and ninety-nine and to indicate fractions.

Ex.: forty-two
Not this: forty two

Ex.: one-fourth
Not this: one fourth
Not this: ¼

(d) *Large numbers.* In numbers containing five or more digits, use commas to separate groups of three digits. *Bluebook* Rule 6.2(a)(vii).

Ex.: 1,234,567
Not this: 1234567

Ex.: 9876
Not this: 9,876

(e) *Percentages and dollars.* Where material repeatedly refers to percentage or dollar amounts, use numerals for those percentages or dollar amounts. *Bluebook* Rule 6.2(a)(v).

2.15 Ordinals

(a) *Do not superscript.* Do not superscript ordinals in text or citations. *See Bluebook* Rule 6.2(b).

Ex.: 1st Cir.
Not this: 1st Cir.

Ex.: (5th Cir. 2004)
Not this: (5th Cir. 2004)

Technology Tips:

- MS Word often automatically converts ordinals to superscript. As you type, if Word automatically converts an ordinal to superscript, you can hit "Ctrl + z" ("Undo") to undo only that instance of auto-correcting. Alternatively, any time MS Word autocorrects something, you can hover your mouse over the auto-correct symbol and ask it to stop making that auto-correction.
- To permanently disable the automatic-superscripting function in MS Word 2010: (1) click on the "File" tab in MS Word; (2) click on the "Options" button in the left-panel menu; (3) click the "Proofing" tab on the left; (4) from the "Proofing" options screen on the right, click the "Autocorrect Options . . ." button; (5) click the "AutoFormat" tab and uncheck "Ordinals (1st) with superscript"; (6) then click the "AutoFormat As You Type" tab and uncheck "Ordinals (1st) with superscript" again; (7) click OK; and (8) then click OK again to exit the "Word Options" menu.

(b) *Use in case captions.* Do not superscript ordinals in case captions.

Ex.: **42ND AIR BASE WING**
Not this: **42ND AIR BASE WING**

(c) *"Second" and "third" in textual sentences.* In textual sentences, when following *Bluebook* Rule 6.2(a) requires the use of numerals, use "2nd" or "3rd" for figures representing ordinal numbers ending in two or three. *See Bluebook* Rule 6.2(b).

Ex.: The 43rd Air Base Wing is located in . . . .
Ex.: The 102nd Congress could not pass a rule that would bind the 103rd Congress.

(d) *"Second" and "third" in citations.* In citations, when referencing "second" or "third," use "2d" or "3d." *Bluebook* Rule 6.2(b)(ii); *see also* Authority Drafting Guide Rule 3.14.

Ex.: *See also id*. at 9 (citing *Pitta v. Hotel Ass'n of N.Y.C., Inc.*, 806 F.2d 419 (2d Cir. 1986)).
Not this: *See also id*. at 9 (citing *Pitta v. Hotel Ass'n of N.Y.C., Inc.*, 806 F.2d 419 (2^{d} Cir. 1986)).
Not this: *See also id*. at 9 (citing *Pitta v. Hotel Ass'n of N.Y.C., Inc.*, 806 F.2d 419 (2nd Cir. 1986)).

2.16 Sections, Articles, and the Section Symbol (§)

(a) *First word of sentence.* The first word of any sentence must be spelled out, so "§" should never begin a sentence. Spell out "Section" instead. *Bluebook* Rule 6.2(c).

Ex.: Section 7106 of the Statute states . . . .
Not this: § 7106 of the Statute states . . . .

(b) *CBA articles and sections in textual sentences.* Always write out "Article" and "Section" when referring to *specific* articles and sections of collective-bargaining agreements (CBAs) in a textual sentence.

Ex.: The Arbitrator found that the Agency violated Section 5 of the CBA when it denied the grievant's leave request.
Not this: The Arbitrator found that the Agency violated § 5 of the CBA when it denied the grievant's leave request.

Ex.: The Arbitrator found that the Agency's reassignment of the grievant violated Article 8, Section 4 of the parties' agreement.
Not this: The Arbitrator found that the Agency's reassignment of the grievant violated Art. 8 § 4 of the parties' agreement.

But in citations, "Article" should be abbreviated "Art.," and "Section" should be indicated by "§." Authority Drafting Guide Rule 3.17(b).

Ex.: The Arbitrator found that Article 4, Section 3(b) of the parties' collective-bargaining agreement (CBA) required notice and bargaining before making changes to working conditions.[1]

[1] Award at 12 (citing CBA Art. 4, § 3(b)).

(c) *Capitalization in textual sentences.* When referring to *specific* CBA articles or sections in a textual sentence, "Article" and "Section" should be capitalized.

Ex.: The Arbitrator found that Article 4, Section 1 and Article 6, Section B of the parties' agreement did not prohibit the Agency's conduct.

But: Article 12 provides that . . . . The Union claims that this article requires the Agency to . . . .

But: Although the Agency concedes that the Arbitrator correctly interpreted Article 14 of the parties' agreement, it argues that he misinterpreted several other sections of the agreement.

(d) *Use of "§" with statutes and regulations.* Although we do not use "§" in textual sentences when referring to sections of CBAs, *see* Authority Drafting Guide Rule 2.16(b), "§" should be used when referring to sections of the Code of Federal Regulations and the U.S. Code, provided that "§" is not at the beginning of a sentence. *Bluebook* Rule 6.2(c); *see also* Authority Drafting Guide Rule 2.16(a).

Ex.: Section 2425.7 of the Authority's Regulations provides, in pertinent part:

> Where an arbitration matter before the Authority does not involve allegations of unfair labor practices . . . , and the excepting party wishes to receive an expedited Authority decision, the excepting party may request that the Authority issue a decision that resolves the parties' arguments without a full explanation of the background, arbitration award, parties' arguments, and analysis of those arguments.[1]

[1] 5 C.F.R. § 2425.7.

Ex.: The right of an agency to assign work under § 7106(a)(2)(B) of the Statute includes the authority to determine when work assignments will occur.

(e) *Use non-breaking space with "§."* When using "§," insert a nonbreaking space between "§" and the section's numeric or alphanumeric designation. *Bluebook* Rule 6.2(c); *see also* Authority Drafting Guide Rule 2.8(b)(4).

Ex.: § 7106
Not this: §7106

Ex.: § 7121(f)
Not this: §7121(f)

2.17 Defined Terms

(a) *Avoid acronyms and initialisms.* When practical, use words rather than acronyms or initialisms to create defined terms in a textual sentence.

Ex.: correctional officers (officers)
Not this: correctional officers (COs)

Ex.: human-resources specialist (specialist)
Not this: human-resources specialist (HR specialist)

(b) *Commonly used acronyms.* But if it would be confusing to the reader to abandon a commonly used acronym (or inconsistent with a previous line of cases), then use that accepted acronym.

Ex.: Fair Labor Standards Act (FLSA)
Ex.: Revised National Inspection Assignment Policy (RNIAP)
Ex.: *NAGE, Local R14-87*, 21 FLRA 24 (1986) (*KANG*)

(c) *The Back Pay Act.* Although the Back Pay Act may be defined and referred to as either "(BPA)" or "(the Act)," for consistency with prior Authority decisions, refer to money awarded under the Back Pay Act as "backpay."

Ex.: The Arbitrator awarded backpay under the Back Pay Act.

(d) *Terms for Authority roles.* For consistency with prior Authority decisions, use the following defined terms:

1. Use the defined term "RD" for an Authority Regional Director.

   Ex.: The Regional Director (RD) concluded that the Activity had not established that the Statute barred employees . . . .
   Ex.: The RD considered whether security officers should be excluded from the bargaining unit.

2. Use the defined term "GC" for the "General Counsel" (or "the Counsel for the General Counsel").

   Ex.: The General Counsel (GC) has filed exceptions . . . .

3. Use the defined term "Judge" for an "Administrative Law Judge."

   Ex.: This unfair-labor-practice case is before the Authority on exceptions to the decision of the Administrative Law Judge (Judge) . . . .

(e) *Parties' agreements.* For simplicity and consistency with prior Authority decisions, refer to a collective-bargaining agreement as "the parties' agreement" (without creating a defined term) or create the defined term "(CBA)." To minimize initialisms, however, use "the parties' agreement," rather than "CBA," whenever possible. *See* Authority Drafting Rule 2.17(a). But it is appropriate to use "CBA" when necessary to avoid confusion, such as when there are multiple agreements at issue in a case. Create the defined term "(MOU)" for a memorandum of understanding, and the term "(MOA)" for a memorandum of agreement. Do not use the title of the parties' agreement unless it is necessary to distinguish among several agreements. *See also* Authority Drafting Guide Rule 2.24 (hyphen between "collective" and "bargaining" in the phrase "collective-bargaining agreement").

Ex.: The parties stipulated to the following issue: "whether [the Agency] violated the [parties' agreement] when it disciplined the grievant."
Not this: The parties stipulated to the following issue: "whether [the Agency] violated the 2010 National Agreement when it disciplined the grievant."

Ex.: The Union argued that Agency violated the parties' collective-bargaining agreement (CBA) and a subsequent memorandum of understanding (MOU).
Not this: The Union argued that the Agency violated the parties' "2007 National Agreement" and the "2010 Memorandum of Understanding Between FDIC and NTEU."

(f) *Capitalization.* When creating a defined term, capitalize the term only if it should be capitalized under *Bluebook* Rule 8. Generally, defined terms that refer to a position should not be capitalized. *See also* Authority Drafting Guide Rule 2.17(a).

Ex.: The Agency employed the grievant as a human-resources specialist (specialist).
Ex.: The grievant, a GS-13 program analyst (analyst), filed a grievance.
Ex.: The unit includes emergency-security officers (officers) and investigative officers (investigators).

But defined terms that refer to particular persons within a group of employees having the same position should be capitalized.

Ex.: The Agency selected a specialist with only one year of experience (Specialist A) over a specialist with three years of experience (Specialist B).

And proper nouns (e.g., an agency's name) that are part of a position's title should be capitalized.

Ex.: The grievant is a Customs and Border Protection officer (officer) . . . .

(g) *Parties' filings.* For consistency with standard headings (e.g., "Agency's Exceptions," "Union's Opposition"), when describing or creating a defined term for a filing, indicate a party's or decision maker's relationship to the filing using an apostrophe (') + "s" ('s).

Ex.: GC's Exceptions
Not this: GC Exceptions

Ex.: RD's Decision
Not this: RD Decision

Ex.: Agency's Response to Order to Show Cause
Not this: Agency Response to Order to Show Cause

Ex.: Union's Supp. Submission
Not this: Union Supp. Submission

Exception: In arbitration cases, an arbitrator's award is typically referred to textually as "award," and cited as "Award," not "Arbitrator's Award."

2.18 Capitalization: Documents, Orders, Awards, Separate Opinions

(a) *Do not capitalize in text.* Do not capitalize the names of documents, such as "order," "award," "majority," "dissent," or "concurrence," in textual sentences, either when referencing the document or creating a defined term.

Ex.: The Agency argues that the award is based on a nonfact.
Ex.: The Arbitrator issued an initial award (merits award) and a supplemental award addressing attorney fees (fee award).
Ex.: I disagree with the majority's position that . . . .

(b) *Capitalize in citations.* Capitalize the names of documents, such as "order," "award," "majority," "dissent," or "concurrence," in citation clauses/sentences, both when citing to the documents and when creating defined terms.

Ex.: The Arbitrator found that the grievant failed to follow his supervisor's instructions.[1]

[1] Award at 9.

Ex.: I disagree with the majority's assertion that . . . .[1]

[1] *See* Majority at 7.

Ex.: In the merits award, the Arbitrator noted that the parties did not stipulate to the issues to be resolved.[1]

[1] Merits Award at 6-7.

Ex.: The Authority issued an order directing the Agency to show cause why its exceptions should not be dismissed as interlocutory.[1] In its response, the Agency argued that the exceptions were not interlocutory.[2]

[1] Order to Show Cause (Order) at 2.
[2] Response to Order (Response) at 4.

Ex.: The Arbitrator issued a preliminary ruling on arbitrability (interim award) and a subsequent award on the legality of the Agency's actions (merits award). The Arbitrator held that the grievance was arbitrable.[1]

[1] Interim Award at 4.

Ex.: In its exceptions, the Agency argues that the award is contrary to law.[1]

[1] Exceptions at 5.

2.19 Capitalization: Parties and Decision Makers

(a) *Parties and decision makers in the present case.* References to the parties and decision makers in the matter that is the subject of an IM/decision should be capitalized. *See Bluebook,* Bluepages Rule B7.3.2.

Ex.: The Union argues . . . .
Ex.: The Agency claims . . . .
Ex.: The Arbitrator found . . . .
Ex.: The Regional Director (RD) found . . . .
Ex.: The Hearing Officer determined . . . .

(b) *Parties and decision makers in other cases.* References to the parties and decision makers in cases that are *not* the subject of the IM/decision should *not* be capitalized. For example, the term "respondent" should not be capitalized even if the respondent in the case you are citing is the same as the respondent in the instant case.

Ex.: An arbitrator exceeds his or her authority when . . . .[3]

[3] *See U.S. Dep't of VA*, 55 FLRA 1213, 1216 (2000) (finding award that required an agency to reimburse employees for increased parking rates was equitable where agency unilaterally increased the rates without bargaining with union).

Ex.: *U.S. Dep't of the Treasury, IRS, Oxon Hill, Md.*, 56 FLRA 292, 300 (2000) (finding that arbitrator's award of punitive damages was deficient after union conceded it was contrary to law).

Ex.: Where an arbitrator resolves a disciplinary-action claim exclusively under a collective-bargaining agreement, an arbitrator may establish and apply whatever burden the arbitrator considers appropriate unless a specific burden of proof is required.[4]

[4] *See, e.g., U.S. Dep't of the Army, U.S. Army Corps of Eng'rs, St. Louis Dist., St. Louis, Mo.*, 65 FLRA 642, 645 (2011) (arbitrator determining whether agency had "just cause" to suspend grievant under the parties' agreement not required to apply statutory standards).

(c) *"Grievant."* Do not capitalize "grievant."

Ex.: The grievant alleged . . . .

And when quoting a source that capitalizes this term, alter the quote to follow the Authority's Drafting Guide Rules. *See* Authority Drafting Guide Rule 1.4.

Ex.: The Arbitrator found that "the [g]rievant established that [three] of the disciplinary actions against him were discriminatorily motivated."
Not this: The Arbitrator found that "the Grievant established that 3 of the disciplinary actions against him were discriminatorily motivated."

(d) *Union officers.* Do not capitalize the titles of union officers.

Ex.: The grievant was the Union president.
Not this: The grievant was the Union President.

2.20 "Federal." Capitalize "federal" when the word it modifies is capitalized. *See Bluebook* Rule 8(c)(ii).

Ex.: federal government
Not this: Federal government

Ex.: Federal Constitution
Not this: federal Constitution

Ex.: federal law
Not this: Federal law

Ex.: Federal Circuit
Not this: Federal circuit

2.21 Emphasis

(a) *Use italics.* Italicize words and phrases to indicate emphasis. *See Bluebook* Rule 7(a).

Ex.: Although the Arbitrator found that all *details* "must" be evidenced by documentation and a position vacancy,[1] he did not make a similar finding regarding all *temporary promotions*.[2]

[1] Award at 18-19.
[2] *See id.* at 19-20.

Ex.: In response to the dissent, we emphasize that our decision merely applies MSPB precedent to find that, where an arbitrator mitigates a penalty, and the *mitigation is based on evidence that was known or readily available to the agency at the time of the discipline*, attorney fees are required under the fifth *Allen* criterion.[22]

[22] *See, e.g.*, *Miller*, 106 M.S.P.R. at 551; *Del Prete*, 104 M.S.P.R. at 434-35.

(b) *Do not indicate original emphasis.* Unless the source of emphasis is otherwise indicated, it is assumed to have been in the original, and should not need to be noted with a parenthetical. *See Bluebook* Rule 5.2(d)(iii).

Ex.: Second, the Union alleges that the award does not violate the BPA because the Arbitrator found that "'*each* [g]rievant was harmed' and that 'to make the [g]rievants whole, it is appropriate to order that *each* [g]rievant be compensated . . . .'"[3]

[3] *Id.* at 24 (quoting Award at 7).

Not this: Second, the Union alleges that the award does not violate the BPA because the Arbitrator found that "'*each* [g]rievant was harmed' and that 'to make the [g]rievants whole, it is appropriate to order that *each* [g]rievant be compensated . . . .'"[3]

[3] *Id.* at 24 (emphasis in original) (quoting Award at 7).

(c) *Use only italics for emphasis.* When quoting a document that uses bolded or underlined text for emphasis, convert that emphasis to italics. The conversion from one method of emphasis to italics does not need to be noted in a parenthetical.

Ex.: If the original text is:

The grievant's allegation that these remarks were **inaccurate** does not establish that they were **discriminatory**.

Then it would be quoted as:

The Arbitrator found that "[t]he grievant's allegation that these remarks were *inaccurate* [did] not establish that they were *discriminatory*."[1]

[1] Award at 13.

2.22 Italicizing Foreign Words and Phrases. Most Latin words and phrases used in legal writing are no longer italicized unless they are very obscure. *Bluebook* Rule 7(b).

Ex.: Do not italicize the following:

- de novo
- prima facie
- functus officio
- en banc
- sua sponte
- quid pro quo
- res judicata
- de minimis
- status quo ante

But *do* italicize:

- *Id.* (*id.*)

2.23 Serial Comma

(a) *Use the "serial" (or "Oxford") comma.* In a series of three or more items with a conjunction before the last item, use a comma between all items in the series. Always include a comma immediately before the conjunction (e.g., "and" or "or"). *GPO Style Manual*, Rule 8.42; *Chicago Manual of Style*, Rule 6.18.

Ex.: The authorization form requires signatures from the employee working the overtime, the captain, and the warden.
Not this: The authorization form requires signatures from the employee working the overtime, the captain and the warden.

Ex.: Thus, the Agency does not establish that the Arbitrator's interpretation of Article 40 is irrational, implausible, unfounded, or in manifest disregard of the parties' agreement, and we deny the essence exception.
Not this: Thus, the Agency does not establish that the Arbitrator's interpretation of Article 40 is irrational, implausible, unfounded or in manifest disregard of the parties' agreement, and we deny the essence exception.

(b) *Alter text to include.* When quoting a source that does not use a serial comma, alter the text to include the missing comma by inserting a bracketed comma ([,]). *See* Authority Drafting Guide Rule 1.4; *see also* Authority Drafting Guide Rule 4.1(a).

Ex.: In answering applicants' questions, recruitment assistants "utilize various federal and Activity guidelines, rules[,] and regulations . . . in order to provide answers" to applicants.[1]

[1] RD's Decision at 7.

Not this: In answering applicants' questions, recruitment assistants "utilize various federal and Activity guidelines, rules and regulations . . . in order to provide answers" to applicants.[1]

[1] RD's Decision at 7.

2.24 **Hyphens in Compound Modifiers.** Where two words create an adjective that modifies a noun, hyphenate those words.

Ex.: make-whole relief
Ex.: procedural-arbitrability determination
Ex.: fourteen-day suspension
Ex.: two-pronged test
Ex.: collective-bargaining agreement
Ex.: unfair-labor-practice case

Ex.: An off-duty officer was on the premises.
But: The officer was off duty.

Ex.: It is a well-established practice that . . . .
But: It is well established that . . . .

Ex.: We deny the Union's contrary-to-law exception.
But: The Union argues that the award is contrary to law.

Do not hyphenate phrases such as "reduction-in-force" if there is no grammatical reason to do so.

Ex.: The Agency conducted a reduction in force.
But: The Union alleged that the Agency did not follow the parties' negotiated reduction-in-force procedures.

2.25 Dashes. Because MS Word often changes two consecutive hyphens (--) into one "en dash" (–), always use the "en dash" (–) instead of two consecutive hyphens (--) for consistency.

2.26 Appendix

(a) *Format.* The standard heading for an appendix is all caps, not bolded, and centered on a separate page at the end of the decision, but before a separate opinion.

Ex.:

APPENDIX

(b) *Referencing.* Because an appendix is *part of* the Authority's decision, and not an attachment to the decision, any reference to the appendix should refer to "the appendix to this decision."

Ex.: Article X, Section 4 of the parties' agreement is set forth in the appendix to this decision.
Not this: Article X, Section 4 of the parties' agreement is set forth in the attached appendix.

Ex.: The relevant provisions of the parties' agreement are set forth in the appendix to this decision.
Not this: The relevant provisions of the parties' agreement are set forth in the attached appendix to this decision.

(c) *Bold and underline.* Bolding or underlining of headings is not emphasis and does not need to be replicated in the appendix. But where there is emphasis in the text, it should be replicated with all emphasis being converted to *italics*. The conversion from one method of emphasis to italics does not need to be noted in a parenthetical. Authority Drafting Guide Rule 2.21(c).

Ex.: If the original text is "All employees **must** wash their hands," then quote it as "All employees *must* wash their hands."

Ex.: If the original text is:

Section 9: Leave Without Pay (LWOP)

An approved absence that would otherwise be chargeable to sick leave will be charged to LWOP rather than earned annual leave when the employee has exhausted accrued sick leave and requests LWOP in lieu of annual leave.

then quote it as:

Section 9: Leave Without Pay (LWOP)

An approved absence that would otherwise be chargeable to sick leave will be charged to LWOP rather than earned annual leave when the employee has exhausted accrued sick leave and requests LWOP in lieu of annual leave.

2.27 Attachments to Filings

(a) *Refer to as "attachments" unless otherwise marked.* Any attachments to the case filings should be referred to as "Attachment" or "Attachments" (citation format: "Attach." or "Attachs."), *unless* a party has identified the attachments by some other name (e.g., Exhibit (citation format: "Ex.")).

Ex.: Exceptions, Ex. 3, Tr. at 12 (where excepting party labels document as "Ex. 3" or "Exhibit 3").

Ex.: Exceptions, Attach. 5, Collective-Bargaining Agreement (CBA) at 23 (where excepting party labels attachment as "Attachment 5," "#5," or not at all).

(b) *Unnumbered.* If attachments are unnumbered, then number them for citation purposes in the same order that they are set forth in the case file. If a party has included its own numbering system, then use that numbering system. Similarly, pinpoint citations to particular pages in attachments should use any page numbering provided by the party. *See* Authority Drafting Guide Rule 3.3(d).

(c) *Exception for awards.* But when resolving exceptions to arbitration awards, cite the arbitrator's award as "Award" even though the award is generally filed as an attachment to the exceptions.

Ex.: Award at 6.
Not this: Exceptions, Attach. 1, Award at 6.

(d) *Providing title of document is optional.* Attachments may be cited with or without the document's title. Provide the document's title when it is necessary or helpful to the reader, or when necessary to create a short cite for future citations. If you are providing a title for a cited attachment, then you do not have to use the title appearing on the document, particularly where the original title is unwieldy or long.

Ex.: Exceptions, Attach. 4 at 13.
Ex.: Exceptions, Attach. 5, Collective-Bargaining Agreement (CBA) at 23.
Ex.: Opp'n, Attach. 7.
Not this: Opp'n, Attach. 7, Email from Union president to Agency representative, dated April 1, 2010.

2.28 Internal Cross-References

(a) *Avoid using "infra" and "supra."* Because the Authority encourages "plain writing," Authority Drafting Guide Rule 1.6, prefer plain-language terms such as "above," "previously," and "below," over "*supra*" (to refer back to material that has already appeared) and "*infra*" (to refer to material that appears later in the document).

If *"infra"* or "*supra"* is unavoidable, then do *not* follow these terms with a comma. *See Bluebook* Rule 3.5.

Ex.: *See infra* note 4.
Not this: *See infra*, note 4.

Ex.: As discussed *supra* section II.A., ...
Not this: As discussed *supra*, section II.A., ...

(b) *Refer to sections or footnotes, not page numbers.* Because page numbers change when decisions are converted to dual-column format for publication, cross-references should refer to sections or footnotes within the decision, rather than page numbers, wherever practicable.

Ex.: The parties also filed several supplemental submissions, which are discussed below in Section V.

Ex.: In addition, the Agency requested leave to file a supplemental exception and supporting brief, but, for reasons noted below in Section IV.B.2. note 13, we find it unnecessary to determine whether this submission is properly before us.

Ex.: As noted above,[1] § 2429.5 of the Authority's Regulations provides . . . .

[1] *Supra* note 3.

Ex.: As set forth above in Section III.B., the Union requests that the Authority exclude from consideration . . . .

2.29 Special Considerations for ULP Cases

(a) *Changes to the Judge's order and notice.* When the Authority upholds an Administrative Law Judge's finding of a ULP, the Authority typically adopts the Judge's Order and Notice. But the Authority makes the following changes, which are *not* bracketed:

- Change "our employees" to "employees" in notices.
- Correct grammar mistakes/typos, but maintain the substance of the Judge's recommended wording *unless* the Authority has specifically modified it in its decision.
- Recreate defined terms in notices (even if previously defined in the decision). Although the "Order" is part of the Authority's decision and, as such, should rely on short-cites created in the decision, the "Notice" should be a stand-alone document understandable to employees without reference to the underlying Authority decision.

(b) *Reference the "attached decision."* When converting ULP IMs to decisions, at the first mention of the Judge's decision, indicate that the decision is "attached" because the Authority attaches the Judge's decision to all of the Authority's ULP decisions (except remands from courts of appeals).

Ex.: This unfair-labor-practice (ULP) case is before the Authority on exceptions to the attached decision of the Administrative Law Judge (Judge) . . . .

(c) *Specify type of complaint.* When discussing the complaint for the first time, be sure to indicate whether the case concerns allegations in a "complaint," a "consolidated complaint," an "amended complaint," or an "amended, consolidated complaint."

Ex.: This case is before the Authority on a complaint . . . .
Ex.: This case is before the Authority on a consolidated complaint . . . .
Ex.: This case is before the Authority on an amended complaint . . . .

2.30 CIP Recommendations. CIP memos to the file generally flag outstanding procedural issues that need to be resolved in the Authority's decision. They also often make a recommendation for disposition of those procedural issues. If there is a CIP memo in the case file that makes a recommendation, then note this recommendation in the IM, but not in the decision.

Ex.: Consistent with CIP's recommendation, *we recommend finding the Union's opposition untimely, and not considering it*.
Ex.: Contrary to CIP's recommendation, *we recommend considering the Union's supplemental submission.*

§ 3 Citations

3.1 **Location.** All citations go in footnotes, not in the text, of IMs and decisions. *See Bluebook* Rule 1.1. Citations should also be footnoted in appendixes to decisions.

3.2 **Citations to the record in the "Background" section.**

(a) *In IMs.* Include citations to the record in the "Background" section of IMs.

(b) *In decisions.* Eliminate citations to the record in the "Background" of decisions – including cover memo/decisions – *except* when you are using a direct quote or when there is some need to know where in the record the point has been made.

3.3 **Pinpoint Citations**

(a) *Must use.* Pinpoint citations (also known as "pinpoint cites" or "pincites") refer the reader to the exact page that contains the information or quotation being relied upon for support. Pinpoint cites are critical and *must* be used to indicate the particular page or pages of the source on which you are relying, unless you are citing a source generally without reliance on any specific page. *Bluebook*, Bluepages Rule B4.1.2, Rule 3.2.

Ex.: In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[1]

[1] *NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998).

Not this: In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[1]

[1] *NFFE, Local 1437*, 53 FLRA 1703 (1998).

But: The Authority, after reviewing the duty of fair representation, first set forth the standard of fair representation where union membership is not a factor in *NFFE, Local 1453*.[1]

[1] 23 FLRA 686 (1986).

(b) *Do not omit when same as first page.* Do not omit a pincite because it is the same as the first page of the decision. *Bluebook*, Bluepages Rule B4.1.2.

Ex.: *Letterkenny Army Depot*, 5 FLRA 272, 272 (1981).

(c) *Page range.* When a pincite spans more than one page, give inclusive page numbers, separated by a hyphen (-). Always retain the last two digits, but drop other repetitious digits. *Bluebook* Rule 3.2(a). To cite to multiple pages that are not consecutive, list each page, separated by a comma and one space. *Bluebook*, Bluepages, B4.1.2.

Ex.: *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994).
Ex.: *Id.* at 110-14.

To cite to multiple pages that are not consecutive, list each page, separated by a comma and one space. *Bluebook*, Bluepages, B4.1.2.

Ex.: *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 683, 687 (D.C. Cir. 1994).
Ex.: *Id.* at 103, 106, 132.

(d) *Use page numbers provided on record evidence.* When citing any document from the record that has printed page numbers, use the page numbers provided on the document. *See* Authority Drafting Guide Rule 2.27(b).

Ex.: Exceptions, Attach. 4 at 624 (even if party only provides four pages of the document, and they are numbered 622, 623, 624, and 625).

3.4 Case Names

(a) *Authority decisions.* The Authority cites only the first party name in an Authority decision.

Ex.: *NTEU, Chapter 24*, 50 FLRA 330 (1995).
Not this: *NTEU, Chapter 24 and U.S. Dep't of Treasury, IRS*, 50 FLRA 330 (1995).

Ex.: *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37 (1998).
Not this: *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala. and Ala. Ass'n of Civilian Technicians*, 55 FLRA 37 (1998).

(b) *Variances with Bluebook.*

1. *Geographical designations.* Notwithstanding *Bluebook* Rule 10.2.1(f), do not omit geographical designations.

   Ex.: *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 66 FLRA 712 (2012).
   Not this: *U.S. Dep't of the Treasury, IRS*, 66 FLRA 712 (2012).

2. *Union names.* Notwithstanding *Bluebook* Rule 10.2.1(i), when citing to Authority decisions, for union names, do not omit larger units like AFL-CIO in citations. List everything that is in the caption, not just the smallest unit.

   Ex.: *AFGE, Local 12, AFL-CIO*, 17 FLRA 674, 681 (1985).
   Not this: *AFGE, Local 12*, 17 FLRA 674, 681 (1985).
   Not this: *AFGE*, 17 FLRA 674, 681 (1985).

3. *Authority and National Labor Relations Board (NLRB) reporters.* Notwithstanding *Bluebook* Rule 6.1(b) and *Bluebook* Table T1, the Authority reporter and the NLRB reporter are cited without periods.

   Ex.: *U.S. Dep't of the Navy, Naval Surface Warfare Ctr., Indian Head Div., Indian Head, Md.*, 56 FLRA 848, 850 (2000).
   Not this: *U.S. Dep't of the Navy, Naval Surface Warfare Ctr., Indian Head Div., Indian Head, Md.*, 56 F.L.R.A. 848, 850 (2000).

   Ex.: *Mason & Hanger-Silas Mason Co.*, 167 NLRB 894, 907 (1967).
   Not this: *Mason & Hanger-Silas Mason Co.*, 167 N.L.R.B. 894, 907 (1967).

4. *MSPB reporter.* Notwithstanding *Bluebook* Table T1, the Authority abbreviates the Merit Systems Protection Board's reporter as M.S.P.R. for citation purposes.

   Ex.: *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280, 305 (1981).
   Not this: *Douglas v. Veterans Admin.*, 5 M.S.P.B. 280, 305 (1981).

3.5 Abbreviations in Citations

(a) *Words that must be abbreviated.* A full list of words and geographic designations that *must* be abbreviated in case names in citations is provided in Tables T6 and T10 of the *Bluebook*, both of which are attached to this Drafting Guide as appendixes. *See* Authority Drafting Guide, Apps. B and C.

(b) *"Commonly understood abbreviations."* The list in Table T6 of the *Bluebook* is not exhaustive, and additional commonly understood abbreviations may be used. For IMs and decisions, the list of "commonly understood abbreviations" includes some union and agency names. Authority Drafting Guide Rules 3.5(g) and 3.5(h).

(c) *Case names in textual sentences.* When providing full case names in textual sentences, write out all the words in the party name(s) *except* those in *Bluebook* Rule 10.2.1(c) *and* the union and agency abbreviations in Authority Drafting Guide Rules 3.5(g) and 3.5(h). But if one of the words in *Bluebook* Rule 10.2.1(c) begins a party name, then *do not* abbreviate it. *Bluebook* Rule 10.2.1(c). However, you *should* always use the union and agency abbreviations in Authority Drafting Guide Rules 3.5(g) and 3.5(h), even if they begin a party name.

Ex.: In *U.S. Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California*,[1] the Authority held . . . .

[1] 50 FLRA 96, 99 (1995).

Not this: In *U.S. Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan Air Force Base, Cal.*,[1] the Authority held . . . .

[1] 50 FLRA 96, 99 (1995).

Ex.: In support of this argument, the Agency cites *U.S. Department of the Navy v. FLRA*.[1]

[1] 665 F.3d 1339 (D.C. Cir. 2012).

Not this: In support of this argument, the Agency cites *U.S. Department of the Navy v. Federal Labor Relations Authority*.[1]

[1] 665 F.3d 1339 (D.C. Cir. 2012).

But: Remember that the rule for abbreviating agency names in Authority Drafting Guide Rule 3.5(h) applies only to *case citations*. So, if you are referring to one of the agencies listed in that rule in another context, then you must write the agency name out at the first use.

Ex.: We follow the precedent of the Merit Systems Protection Board (MSPB).
Not this: We follow the precedent of the MSPB.
Unless: You have created the defined term "MSPB" earlier in the text of the document.

(d) "*United States" in textual sentences*. In textual sentences, abbreviate "United States" as "U.S." *only* when it is used as an adjective. *Bluebook* Rule 6.1(b).

Ex.: We also note that this decision is distinguishable from the U.S. Court of Appeals for the Ninth Circuit's recent decision . . . .
But: The history of the United States is . . . .

(e) "*United States" in case names.* Abbreviate "United States" as "U.S." in case names (even in textual sentences), *unless* "United States" is the entire name of the party. *Bluebook* Rule 10.2.2.

Ex.: The Union cites *U.S. DOJ v. FLRA*,[1] for the proposition that . . . .

[1] 266 F.3d 1228 (D.C. Cir. 2001).

But: *United States v. Smith*, 668 F.3d 427 (7th Cir. 2012).

(f) *Eight words that must always be abbreviated in citations.* Always use the following abbreviations in case citations, including when part of textual sentences. *Bluebook* Rule 10.2.1(c).

- & (and)
- Ass'n (Association)
- Bros. (Brothers)
- Co. (Company)
- Corp. (Corporation)
- Inc. (Incorporated)
- Ltd. (Limited)
- No. (Number)

(g) *Unions names always abbreviated in case names.*

- AFGE (American Federation of Government Employees)
- AFL-CIO (American Federation of Labor and Congress of Industrial Organizations)
- AFSCME (American Federation of State, County, and Municipal Employees)
- IAM (International Association of Machinists)
- IAMAW (International Association of Machinists and Aerospace Workers)
- IFPTE (International Federation of Professional and Technical Engineers)
- NAGE (National Association of Government Employees)
- NAIL (National Association of Independent Labor)
- NATCA (National Air Traffic Controllers Association)
- NFFE (National Federation of Federal Employees)
- NTEU (National Treasury Employees Union)
- POPA (Patent Office Professional Association)
- SEIU (Service Employees International Union)

(h) *Agency names always abbreviated in case names.*

- BEP (Bureau of Engraving and Printing)
- BOP (Bureau of Prisons)
- CBP (Customs and Border Protection)
- DHS (Department of Homeland Security)
- DOD (Department of Defense)
- DOJ (Department of Justice)
- DOL (Department of Labor)
- EEOC (Equal Employment Opportunity Commission)
- EPA (Environmental Protection Agency)
- FAA (Federal Aviation Administration)
- FCC (Federal Communications Commission)
- FDIC (Federal Deposit Insurance Corporation)
- FEC (Federal Election Commission)
- FLRA (Federal Labor Relations Authority)
- GAO (Government Accountability Office)
- GPO (Government Printing Office)
- GSA (General Services Administration)
- HHS (Health and Human Services)
- HUD (Housing and Urban Development)
- ICE (Immigration and Customs Enforcement)
- INS (Immigration and Naturalization Service)
- IRS (Internal Revenue Service)
- MSPB (Merit Systems Protection Board)
- NLRB (National Labor Relations Board)
- OPM (Office of Personnel Management)
- SEC (Securities and Exchange Commission)
- SSA (Social Security Administration)
- USDA (United States Department of Agriculture)
- VA (Veterans Affairs)

Be sure to fully abbreviate the entire case name. If an agency name includes additional designations, such as "United States" or "Department of," then these words need to be appropriately abbreviated and included in the case citation.

Ex.: *Dep't of the Treasury, BEP*
Ex.: *U.S. CBP*
Ex.: *Dep't of HHS*
Ex.: *Dep't of the Treasury, IRS*

(i) *Abbreviations for court documents commonly used by the Authority. See Bluebook*, Bluepages Table BT1.

- Aff. (Affidavit)
- Am. (Amended)
- App. (Appendix [except when citing Joint Appendix (J.A.)])
- Attach. (Attachment)
- Br. (Brief)
- Cert. (Certiorari)
- Ex. (Exhibit)
- Hr'g (Hearing)
- Mem. (Memorandum)
- Mot. (Motion)
- Opp'n (Opposition)
- Pet. (Petition)
- Recons. (Reconsideration)
- Reh'g (Rehearing)
- Response (Resp.)
- Tr. (Transcript)

Note: As "Opp'n" and "Tr." are included in this list, you do not need to create a defined term before using those abbreviations. In addition, the terms "Answer," "Order," and "Reply" do not require abbreviation.

3.6 Signals

(a) *Not required.* A signal (such as "*see*") is not required when the cited authority: (1) directly states the proposition; (2) identifies the source of a quotation; or (3) identifies an authority referred to in the text. *Bluebook* Rule 1.2(a) (no signal).

Ex.: When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.[1] In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.[2] In making that assessment, the Authority defers to the arbitrator's underlying factual findings.[3]

[1] *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).
[2] *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998).
[3] *Id.*

Not this: When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.[1] In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.[2] In making that assessment, the Authority defers to the arbitrator's underlying factual findings.[3]

[1] *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).
[2] *See U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998).
[3] *See id.*

(b) *General guidance.* For general guidance on the use of signals to indicate that the cited authority supports, contradicts, or offers a useful comparison to the proposition it accompanies, consult *Bluebook* Rule 1.2. To avoid common citation errors associated with signals, see Authority Drafting Guide Rule 3.9.

(c) *Order and punctuation of multiple signals.* When more than one signal is used, the signals (along with the authorities they introduce) should appear in the order in which those signals are listed in *Bluebook* Rule 1.2. Signals of the same basic type – supportive, comparative, contradictory, or background, *see Bluebook* Rule 1.2(a)-(d) – must be strung together within a single citation sentence and separated by *semicolons*. But signals of different types must be grouped in different citation sentences. *Bluebook* Rule 1.3.

Ex.: The Arbitrator found that the Agency had no statutory duty to bargain.[1]

[1] Award at 12; *see also id.* at 16-17.

Not this: The Arbitrator found that the Agency had no statutory duty to bargain.[1]

[1] Award at 12. *See also id.* at 16-17.

3.7 *Id.*

(a) *Refers to immediately preceding citation.* When citing the immediately preceding authority, including an immediately preceding footnote, use "*id.*" When using "*id.*," always double check to make sure that the citation it is intended to refer to is, in fact, the immediately preceding citation. *Bluebook* Rule 4.1.

Ex.: In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.[1] In making that assessment, the Authority defers to the arbitrator's underlying factual findings.[2]

[1] *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998).
[2] *Id.*

(b) *Use only when immediately preceding citation has one source.* Use "*id.*" only when the immediately preceding citation contains only one authority. *Bluebook* Rule 4.1.

Ex.: [1] *U.S. DHS, CBP, El Paso, Tex.*, 61 FLRA 684, 686 (2006) (*DHS*); *NTEU, Chapter 207*, 60 FLRA 731, 734 (2005) (*NTEU*).
[2] *NTEU*, 60 FLRA at 735.

Not this: [1] *U.S. DHS, CBP, El Paso, Tex.*, 61 FLRA 684, 686 (2006) (*DHS*); *NTEU, Chapter 207*, 60 FLRA 731, 734 (2005) (*NTEU*).
[2] *Id.* at 735.

If a preceding citation has multiple authorities, you may not use "*id.*" even if you want to cite to both authorities.

Ex.: [1] *U.S. DHS, CBP, El Paso, Tex.*, 61 FLRA 684, 686 (2006) (*DHS*); *NTEU, Chapter 207*, 60 FLRA 731, 734 (2005) (*NTEU*).
[2] *DHS*, 61 FLRA at 686; *NTEU*, 60 FLRA at 734.

Not this: [1] *U.S. DHS, CBP, El Paso, Tex.*, 61 FLRA 684, 686 (2006) (*DHS*); *NTEU, Chapter 207*, 60 FLRA 731, 734 (2005) (*NTEU*).
[2] *Id.*

Ignore sources identified in explanatory parentheticals, explanatory phrases, or prior/subsequent history for purposes of this rule. *Bluebook* Rule 4.1.

Ex.: [1] *See Health Care Fin. Admin., Dep't of HHS*, 35 FLRA 274, 289-90 (1990) (*HHS*) (quoting *Phila. Naval Shipyard*, 32 FLRA 417, 420 (1988)).
[2] *Id.* at 291.

(c) *Italicized period.* "*Id.*" always has a period, and the period is always italicized. Also, "*id.*" is capitalized only when it begins a citation sentence.

(d) *Multi-page pincites.* If the preceding citation encompasses more than one page of the source, then you may still use "*id.*" as long as that multiple-page pincite is still accurate. So, if you mean to cite all of the pages included in the preceding multiple-page citation, then use "*id.*"

Ex.: [1] *Health Care Fin. Admin., Dep't of HHS*, 35 FLRA 274, 289-90 (1990).
[2] *Id.*
Not this: [1] *Health Care Fin. Admin., Dep't of HHS*, 35 FLRA 274, 289-90 (1990).
[2] *Id.* at 289-90.

3.8 Short Cites

(a) *Location.* The short-cite parenthetical should appear directly *after the date* and *before* the notation of a separate opinion. *Bluebook* Rule 1.5(b); *see also* Authority Drafting Guide Rule 3.11(a).

Variance from Bluebook: Unlike the *Bluebook*, the Authority always defines terms for future short cites in parentheses – never in brackets and never with the use of "hereinafter."

Ex.: *AFGE, Local 3937*, 66 FLRA 393, 395-96 (2011) (*Local 3937*) (Member DuBester dissenting in part).
Not this: *AFGE, Local 3937*, 66 FLRA 393, 395-96 (2011) (Member DuBester dissenting in part) (*Local 3937*).
Not this: *AFGE, Local 3937*, 66 FLRA 393, 395-96 (2011) [hereinafter *Local 3937*] (Member DuBester dissenting in part).

(b) *Length.* Short cites should be as short as practicable without being confusing.

Ex.: *U.S. Dep't of the Navy, Commander, Navy Region Mid-Atlantic Program Dir., Fleet & Family Readiness, Norfolk, Va.*, 64 FLRA 782, 784 (2010) (*Navy*).
Not this: *U.S. Dep't of the Navy, Commander, Navy Region Mid-Atlantic Program Dir., Fleet & Family Readiness, Norfolk, Va.*, 64 FLRA 782, 784 (2010) (*Dep't of the Navy*).

Ex.: *AFGE, Local 1923*, 66 FLRA 424, 425 (2012) (*Local 1923*).
Not this: *AFGE, Local 1923*, 66 FLRA 424, 425 (2012) (*AFGE, Local 1923*).

(c) *Textual use.* For all textual citations, the short cite must first be defined *in the text*, not in a footnote. But once the term is defined in the text, it may be used in subsequent footnotes. And if a short cite is created in a footnote to be used in subsequent footnotes, but then – after those footnotes – the same authority is cited in the text, you must again create a short cite in the text.

Ex.: The Agency argues that the Authority has previously upheld an award wherein the arbitrator denied a grievance involving the same employee.[4] In this regard, the Agency contends that Authority precedent requires denial of the Union's exceptions.[5]

. . . .

In the award on review in *NTEU, Local 1804* (*Local 1804*),[8] the arbitrator found . . . .

. . . .

Local 1804 is inapposite.[12]

[4] Exceptions at 4 (citing *NTEU, Local 1804*, 65 FLRA 512, 513 (2010) (*Local 1804*)).
[5] *Id.* at 7 (citing *Local 1804*, 65 FLRA at 514).
. . . .
[8] 65 FLRA at 513.
. . . .
[12] 65 FLRA 512.

Not this: In the award on review in *Local 1804*,[8] the arbitrator found . . . .

[8] *NTEU, Local 1804*, 65 FLRA 512, 513 (2010) (*Local 1804*).

(d) *Use in footnotes.* If you create a defined term in one footnote, then you may use it in subsequent footnotes.

Ex.: [1] Article 21 states, in pertinent part, that "any examination[s], certification[s,] or appointment[s]" are "specifically excluded from this negotiated procedure and must be pursued through appropriate alternate procedures." Exceptions, Attach. 2, Tab 6 (CBA) at 63.
. . . .
[8] We note that the Union does not argue that drug tests are "examination[s]" for purposes of Article 21. CBA at 63.

(e) *Non-Authority cases.* For all non-Authority cases, follow the *Bluebook* short-cite rules. For example, for federal-court decisions, you may short cite using the first party name without first parenthetically defining it. *Bluebook* Rule 10.9.

Ex.: The Agency claims that its interpretation of COPRA is "entitled to deference."[4] The Union argues that the Agency is barred from making this argument.[5] However, it is undisputed that the Agency raised this argument before the Arbitrator.[6]

[4] Exceptions at 13 (citing *GSA v. FLRA*, 86 F.3d 1185, 1187 (D.C. Cir. 1996)).
[5] Opp'n at 4.
[6] *See* Award at 7, 13 (citing *GSA*, 86 F.3d at 1187).

Not this: The Agency claims that its interpretation of COPRA is "entitled to deference."[4] The Union argues that the Agency is barred from making this argument.[5] However, it is undisputed that the Agency raised this argument before the Arbitrator.[6]

[4] Exceptions at 13 (citing *GSA v. FLRA*, 86 F.3d 1185, 1187 (D.C. Cir. 1996) (*GSA*)).
[5] Opp'n at 4.
[6] *See* Award at 7, 13 (citing *GSA*, 86 F.3d at 1187).

But: You may create a defined term for clarity, such as when multiple cases have the same first-party name.

Ex.: *GSA I*, *GSA II*, and *GSA III*

3.9 Corrections to Common Citation Errors

(a) *Use "&."* "And" is abbreviated as "&" in case names. *Bluebook* Table T6; *see also* Authority Drafting Guide, App. B.

Ex.: *U.S. DOD, Def. Fin. & Accounting Serv., Cleveland, Ohio*.
Not this: *U.S. DOD, Def. Fin. and Accounting Serv., Cleveland, Ohio*.

(b) *"See, e.g.,."* The signal "*see, e.g.*," includes an italicized comma between "*see*" and "*e.g.*," but the comma after the signal is *not* italicized. *Bluebook* Rules 1.2(a) and 2.1(f).

Ex.: *See, e.g., AFGE, Local 12*, 66 FLRA 750, 751 (2012).
Not this: *See, e.g., AFGE, Local 12*, 66 FLRA 750, 751 (2012).

(c) *Comma after party name.* The comma after the party name is *not* italicized. *Bluebook* Rule 10.

Ex.: *NFFE, Local 2050*, 36 FLRA 618, 639-40 (1990).
Not this: *NFFE, Local 2050,* 36 FLRA 618, 639-40 (1990).

(d) *"See also."* The signal "*see also*" is *not* followed by a comma. *Bluebook* Rule 1.2(a).

Ex.: *See also id.* at 7.
Not this: *See also, id.* at 7.

(e) *"Cf."* The use of the signal "*cf.*" usually requires a parenthetical explanation of how the cited authority supports a proposition different from the main proposition but sufficiently analogous to lend support. *Bluebook* Rule 1.2(a).

Ex.: The denial of fees does not address any of the recognized interest-of-justice criteria discussed above.[8]

[8] *Cf. Ala. Ass'n of Civilian Technicians*, 54 FLRA 229, 233 (1998) (one-sentence denial did not meet statutory requirements).

(f) *"Compare."* The signal "*Compare*" must be used in conjunction with ", *with*" ("*with*" preceded by a comma that is not italicized), and should be used with a parenthetical explanation of how the comparison of the authorities cited supports or illustrates the proposition. *Bluebook* Rule 1.2(b).

Ex.: The Agency's unsubstantiated statements that it filed the SOP by certified mail on December 4, 2009, are not sufficient to establish that the Agency timely filed its SOP.[10]

[10] *Compare NTEU*, 42 FLRA 160, 161 (1991) (affidavits, alone, are insufficient to establish a document's mailing date), *with Haw. Fed. Emps. Metal Trades Council*, 57 FLRA 450, 452 (2001) (postmarked, certified-mail receipt, together with an affidavit attesting to mailing the document on the date on certified-mail receipt, was sufficient to establish the filing date).

3.10 Citation Clauses. Use citation clauses when a sentence contains ideas from two different sources or from two different pages of the same source. Citation clauses are set off from the text by commas, immediately follow the proposition to which they relate, and, if they include a signal, that signal is not capitalized. *Bluebook*, Bluepages Rule B2.

Ex.: Instead, the Judge concluded that the retroactive application of the amendment was a "vindictive abuse of [NATCA's] power" as an exclusive representative,[4] which breached its duty of fair representation under § 7114(a)(1), and thereby violated § 7116(b)(1) and (8),[5] with respect to eight of the nine charging parties against NATCA.

[4] *Id.* at 11.
[5] *See id.* at 15

Not this: Instead, the Judge concluded that the retroactive application of the amendment was a "vindictive abuse of [NATCA's] power" as an exclusive representative,[4] which breached its duty of fair representation under § 7114(a)(1), and thereby violated § 7116(b)(1) and (8), with respect to eight of the nine charging parties against NATCA.[5]

[4] *Id.* at 11.
[5] *Id.* at 11, 15.

3.11 Parentheticals

(a) *Order.* When a citation requires multiple parentheticals, place them in the following order:

(date) (short citation name) (Member/Chairman Last Name concurring/dissenting) (alteration in original) (emphasis added) (footnote omitted) (citations omitted) (quoting another source) (internal quotation marks omitted) (citing another source) (explanatory parenthetical), prior or subsequent history.

Bluebook Rule 1.5(b). Note that explanatory parentheticals precede any citation of subsequent history and the short-citation-name parenthetical precedes any parenthetical noting a separate opinion. *Id.*; *see also* Authority Drafting Guide Rule 3.8(a).

But this order changes when an explanatory parenthetical contains text that itself requires a "quoting" or "citing" parenthetical. Bluebook Rule 10.6.3; *see also* Authority Drafting Guide Rule 3.11(b)(3).

(b) *Explanatory parentheticals.*

1. *Present participle.* Though it is not required, the *Bluebook* encourages writers to begin explanatory parentheticals with a present participle (the base form of a verb + "ing"). *Bluebook*, Bluepages Rule B11.

   Ex.: (discussing the merits of . . .)
   Ex.: (holding that . . .)

2. *Do not italicize "citing" and "quoting."* Parentheticals referring to an authority cited or quoted within source material should use only "(citing . . .)" or "(quoting . . .)," and the words "citing" and "quoting" should *never* be italicized and should *never* be preceded by a comma (,). "Quoting" should be used *only* when the primary authority cited *directly quotes* another source, as indicated by the use of quotation marks. "Citing" should be used *only* when the primary source refers to, but *does not directly quote*, another source. *Bluebook* Rule 10.6.2.

   Ex.: In its response, the Agency argues that its exceptions are not interlocutory because, "where an arbitrator awards particular monetary remedies and leaves to be determined only the specific amounts to be awarded, the arbitrator's retention of jurisdiction to assist the parties in their computations of those remedies 'does not render exceptions interlocutory.'"[1]

   [1] Agency's Response to Order at 4 (quoting *U.S. DHS, CBP*, 64 FLRA 989, 991 (2010)).

   Not this: [1] Agency's Response to Order at 4 (citing *U.S. DHS, CBP*, 64 FLRA 989, 991 (2010)).

   Not this: [1] Agency's Response to Order at 4 (relying on *U.S. DHS, CBP*, 64 FLRA 989, 991 (2010)).

   Not this: [1] Agency's Response to Order at 4, *quoting U.S. DHS, CBP*, 64 FLRA 989, 991 (2010).

   Ex.: When an exception involves an award's consistency with law, the Authority reviews any question of law raised by an exception and the award de novo.[1]

   [1] *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).

3. *Order of parentheticals.* If an explanatory parenthetical contains text that *itself* requires a "quoting" or "citing" parenthetical, then nest the two parentheticals. *Bluebook* Rule 10.6.3.

   Ex.: [21] *E.g., Ass'n of Civilian Technicians, P.R. Army Chapter*, 62 FLRA 144, 145 (2007) (*ACT*) ("The Authority has uniformly held that attempts to relitigate conclusions reached by the Authority are insufficient to satisfy the extraordinary circumstances requirement." (citing *Library of Cong.*, 60 FLRA at 941)).

Not this: [21] *E.g., Ass'n of Civilian Technicians, P.R. Army Chapter*, 62 FLRA 144, 145 (2007) (*ACT*) (citing *Library of Cong.*, 60 FLRA at 941) ("The Authority has uniformly held that attempts to relitigate conclusions reached by the Authority are insufficient to satisfy the extraordinary circumstances requirement.").

(c) *Internal quotation marks.*

1. *How to indicate.* Use apostrophes (') on each side of quotes-within-quotes to indicate internal quotation marks. *Bluebook* Rule 5.1(b)(i).

   Ex.: The Union alleges that the award does not violate the Back Pay Act because the Arbitrator found that "'each [g]rievant was harmed' and that 'to make the [g]rievants whole, it is appropriate to order that each [g]rievant be compensated.'"[7]

   [7] Opp'n at 24 (quoting Award at 7).

2. *Omitting internal quotation marks (plural).* When the entirety of a quotation is itself quoting another source, do not insert internal quotation marks, but indicate "(internal quotation marks omitted)" at the end of the citation.

   Ex.: The Arbitrator found that the grievance was "grounded upon" Articles 3A and 25 of the parties' agreement,[1] as well as a prior arbitration award (Jaffe Award) in which an arbitrator interpreted the parties' agreement to require the Agency to "adequately and fairly compensate []employees for the cost of [their] uniforms."[2]

   [1] *Id.* at 11-12.
   [2] *Id.* at 14 (quoting Jaffe Award) (internal quotation marks omitted).

   Not this: The Arbitrator found that the grievance was "grounded upon" Articles 3A and 25 of the parties' agreement,[1] as well as a prior arbitration award (Jaffe Award) in which an arbitrator interpreted the parties' agreement to require the Agency to "'adequately and fairly compensate []employees for the cost of [their] uniforms.'"[2]

   [1] *Id.* at 11-12.
   [2] *Id.* at 14 (quoting Jaffe Award).

3. *Omitting internal quotation mark (singular).* If the material you are quoting contains an opening quotation mark, but does not contain the corresponding closing quotation mark, then omit the opening quotation mark. Similarly, if the material you are quoting contains a closing quotation mark, but does not contain the corresponding opening quotation mark, then omit the closing quotation mark. In both of these cases, use an "(internal quotation mark omitted)" parenthetical. Note the singular reference to quotation "mark," not "marks."

Ex.: Original CBA text: Management shall exercise the authorities set forth in this section in accordance with applicable law, appropriate regulations, and this National Labor Agreement.

Original award text: The Agency has the right to assign employees. Article 20, Section 1 requires the Agency to exercise that right "in accordance with . . . [the] National Labor Agreement."

Example quotation and citation:

The Arbitrator found that Article 20, Section 1 of the CBA (Section 1) required the Agency to exercise its right to assign employees "in accordance with" the CBA.[1]

[1] *Id.* at 10-11 (quoting CBA Art. 20, § 1.B.(1)) (internal quotation mark omitted).

(d) *Omitting citations and footnotes.*

1. If you quote a source and remove citations within the quotation, then indicate this by using "(citation omitted)" or "(citations omitted)."

Ex.: Original text: The burden of proving the supervisory exclusion falls upon the party asserting it. *Id.* (citing *AFGE, Local 123*, 45 FLRA 32 (1999); *NTEU*, 44 FLRA 31 (1998)).

Example quotation and citation:

The Arbitrator noted that "[t]he burden of proving the supervisory exclusion falls upon the party asserting it."[1]

[1] *Id.* (citations omitted).

2. If the only omission from a quotation is a citation or footnote, then do *not* use ellipses to indicate the omission. Indicate it with "(footnote omitted)" or "(citation omitted)." *Bluebook* Rule 5.3(c).

Ex.: Original text:

Provisions that require management to take specific actions to safeguard an agency's personnel and operations directly interfere with the right to determine internal security practices. *See NTEU*, 53 FLRA 539, 581 (1997). Therefore, the award conflicts with the right to determine internal security practices because it prevents the Agency from reassigning an employee that the Agency has identified as a security risk.

Example quotation and citation:

The Agency argues as follows:

> Provisions that require management to take specific actions to safeguard an agency's personnel and operations directly interfere with the right to determine internal security practices. Therefore, the award conflicts with the right to determine internal security practices because it prevents the Agency from reassigning an employee that the Agency has identified as a security risk.[1]

[1] Exceptions at 16 (citation omitted).

Not this: The Agency argues as follows:

> Provisions that require management to take specific actions to safeguard an agency's personnel and operations directly interfere with the right to determine internal security practices. . . . Therefore, the award conflicts with the right to determine internal security practices because it prevents the Agency from reassigning an employee that the Agency has identified as a security risk.[1]

[1] Exceptions at 16.

(e) *Separate opinions.*

1. *In IMs.* In an IM, always indicate the existence of a separate opinion in the citation.

   Ex.: *U.S. DOJ, Fed. BOP, Fed. Detention Ctr., Honolulu, Haw.*, 66 FLRA 858 (2012) (Chairman Pope dissenting in part).
   Ex.: *NTEU, Chapter 302*, 65 FLRA 746 (2011) (Member Beck dissenting).
   Ex.: *Bremerton Metal Trades Council*, 64 FLRA 543 (2010) (Member DuBester concurring).

2. *In decisions.* In a decision, indicate the existence of a separate opinion *only if* the separate opinion is *relevant* to the proposition for which the decision is being cited.

   Ex.: For example, when citing a negotiability decision for its analysis of Proposal 1, there is no need to indicate *in a decision* that there is a dissent that concerns only Proposal 2.

3. *Citing to a separate opinion.* Indicate parenthetically that you are citing *to* a separate opinion (e.g., Dissenting Opinion of then-Member Pope, Concurring Opinion of Member DuBester, Dissenting Opinion of Member Beck). And the pincite should refer to pages within the separate opinion.

   Ex.: *U.S. Dep't of the Army, U.S. Corps of Engr's, Nw. Div.*, 65 FLRA 131, 135-36 (2010) (*Army*) (Dissenting Opinion of Member Beck).

4. *Member status at time of separate opinion.* When citing a decision where the current Chairman wrote separately when he or she was a Member (not Chairman), use "then-Member."

   Ex.: *Library of Cong.*, 58 FLRA 486, 487 (2003) (then-Member Pope dissenting).
   Ex.: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Sheridan, Or.*, 58 FLRA 279, 288-89 (2003) (Dissenting Opinion of then-Member Pope).

   But if a former Chairman (who subsequently became a Member) writes a separate opinion as a Member, then that Member's prior status as Chairman does not need to be noted.

   Ex.: *Dep't of the Treasury, IRS, Wash., D.C.*, 66 FLRA 712 (2012) (Member Beck dissenting in part).
   Not this: *Dep't of the Treasury, IRS, Wash., D.C.*, 66 FLRA 712 (2012) (then-Member Beck dissenting in part).

3.12 Subsequent History

(a) *When to indicate.* When you cite a decision for the first time, give the case's entire subsequent history, but omit denials of certiorari or denials of similar discretionary appeals, unless the decision is less than two years old or the denial is particularly relevant. *Bluebook* Rule 10.7. Also omit the history on remand or any denial of rehearing *unless* relevant to the point for which the case is cited. *Id.* Finally, omit any disposition withdrawn by the deciding authority, such as an affirmance followed by a reversal on rehearing. *Id.* Rule 10.7.

Ex.: *U.S. DOJ, Fed. BOP, Wash., D.C.*, 64 FLRA 559 (2010) (*BOP*), *pet. for review granted, decision vacated, & remanded sub nom. Fed. BOP v. FLRA*, 654 F.3d 91 (D.C. Cir. 2011) (*BOP v. FLRA*).

Note: This rule also applies to Authority denials of motions for reconsideration. That the Authority denied a motion for reconsideration of a decision need not be included in a citation to that decision unless the decision is less than two years old or the denial is particularly relevant.

Ex.: *NTEU Chapter 231*, 66 FLRA 1024, *recons. denied*, 67 FLRA 67 (2012).
Ex.: *U.S. Dep't of VA, Med. Ctr., Jackson, Miss.*, 46 FLRA 1638 (1993).
Not this: *U.S. Dep't of VA, Med. Ctr., Jackson, Miss.*, 46 FLRA 1638, *recons. denied*, 47 FLRA 533 (1993).

(b) *How to indicate*. T8 of the *Bluebook* lists explanatory phrases that are commonly used to indicate subsequent history. *Bluebook* Table T8. These phrases should be italicized and followed by commas, which are *not* italicized.

1. *Abbreviations for explanatory phrases that are commonly used by the Authority*:
    - aff'd,
    - pet. for review granted,
    - pet. for review denied,
    - rev'd,
    - rev'd on other grounds,
    - vacated,
    - cert. denied,
    - cert. granted,
    - enforced,
    - enforcing
    - modified,
    - modified on reh'g,
    - modified as to other matters,
    - modifying

- recons. granted,
- recons. denied,

Bluebook Table T8.

2. *Abbreviations for explanatory phrases that are infrequently used by the Authority:*
   - pet. for cert. filed,
   - overruled by
   - rev'g
   - pet. for review withdrawn,
   - reh'g denied,
   - appeal denied,
   - appeal dismissed,
   - appeal docketed,
   - appeal filed,

(c) *Multiple decisions within a single year*. When citing a case with several different decisions in the same year, include the year only with the last-cited decision in that year. *Bluebook* Rules 10.5(d) and 10.7.1(a).

Ex.: *NTEU, Chapter 231*, 66 FLRA 1024, *recons. denied*, 67 FLRA 67 (2012).
Not this: *NTEU, Chapter 231*, 66 FLRA 1024 (2012), *recons. denied*, 67 FLRA 67 (2012).

3.13 Citing the Statute and the Authority's Regulations

(a) *Overview.* To help parties locate the statutory or regulatory provisions that apply in their case, for cases in which one or more specific sections of the Federal Service Labor-Management Relations Statute (the Statute) or the Authority's Regulations are cited, make sure to give the full citation the first time a specific section is discussed. And at the first mention of the Statute, create the defined term "(the Statute)." "Statute" is always capitalized.

Ex.: Under § 2429.5 of the Authority's Regulations, the Authority will not consider any arguments that could have been, but were not, presented to the administrative law judge.[1]

[1] 5 C.F.R. § 2429.5.

Ex.: The complaint alleges that the Respondent violated § 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute),[1] when investigators from the Agency threatened the Union president with discipline if he did not reveal an informant's identity.

[1] 5 U.S.C. § 7116(a)(1).

(b) *Authority's Regulations.* It is redundant, and therefore incorrect, to say "5 C.F.R. § 2429.5 of the Authority's Regulations." Use "5 C.F.R." *or* "the Authority's Regulations," but not both.

Ex.: 5 C.F.R. § 2429.5
Ex.: § 2429.5 of the Authority's Regulations
Not this: 5 C.F.R. § 2429.5 of the Authority's Regulations

(c) *The Statute.* It is redundant, and therefore incorrect, to say "5 U.S.C. § 7116 of the Statute." Use "5 U.S.C." *or* "the Statute," but not both.

Ex.: 5 U.S.C. § 7116
Ex.: § 7116 of the Statute
Not this: 5 U.S.C. § 7116 of the Statute

(d) *Do not create short cites.* After you provide the full cite to a statute or regulation, it is not necessary to create a parenthetical short cite for specific sections unless the failure to do so would confuse the reader or create an ambiguity.

Ex.: The Agency contends that the award is contrary to the Back Pay Act and 5 U.S.C. § 7701(g). Specifically, the Agency argues that the grievant is not a prevailing party under § 7701(g) because the Agency restored the grievant's annual leave prior to the hearing.
Not this: The Agency contends that the award is contrary to the Back Pay Act and 5 U.S.C. § 7701(g) (§ 7701(g)). Specifically, the Agency argues that the grievant is not a prevailing party under § 7701(g) because the Agency restored the grievant's annual leave prior to the hearing.

(e) *Capitalization.* The term "Authority's Regulations" should be capitalized. Similarly, capitalize "Regulation" or "Regulations" used alone when they refer to the Authority's Regulations.

Ex.: Section 2429.5 of the Authority's Regulations states that . . . .
Ex.: The Authority's Regulations concerning the review of arbitration awards, as well as certain related procedural Regulations, including the Regulations governing commercial filing, were modified effective November 9, 2009,[1] and again October 1, 2010.[2] As the exceptions in this case were filed prior to November 9, 2009, we apply the prior Regulations here.

[1] *See* 74 Fed. Reg. 51,741 (2009).
[2] *See* 75 Fed. Reg. 42,283 (2010).

3.14 Citations to Federal Courts. Citations to federal courts should follow the form of *Bluebook* Table T1.1.

Ex.: F.2d
Not this: F.2nd (do not spell out the ordinal)
Not this: F. 2d (omit space after period)

Ex.: F.3d
Not this: F.3rd (do not superscript or spell out the ordinal)
Not this: F. 3d (omit space after period)

Ex.: F. Supp.
Not this: F.Supp. (add space after period)

Ex.: F. Supp. 2d
Not this: F.Supp.2d (add spaces after both periods)

Ex.: F. App'x
Not this: F.App'x (add space after period)
Not this: F. App'x. (omit period after "App'x")

3.15 Citing Footnotes

(a) *Overview.* To cite a footnote, provide the page on which the footnote appears, followed by "n." and the footnote number, with no space between "n." and the number. *Bluebook* Rule 3.2(b).

Ex.: *See, e.g.*, *AFGE, Council Local 2128*, 59 FLRA 406, 407 n.4 (2003).

(b) *Multiple footnotes.* Cite multiple footnotes by using "nn." *Bluebook* Rule 3.2(b).

Ex.: In applying *BEP*, the Authority routinely refuses to address elements of the test that are not argued by the parties.[1]

[1] *See U.S. DHS, U.S. CBP*, 61 FLRA 113, 116 nn.8-9 (2005).

(c) *Non-consecutive footnotes.* Treat nonconsecutive footnotes like nonconsecutive pages, but (except for internal cross-references) substitute an ampersand (&) for the last comma. *Bluebook* Rule 3.2(b); *see also Bluebook* Rule 3.2(a); *Bluebook*, Bluepages, B4.1.2; Authority Drafting Guide Rule 3.3(c).

Ex.: *Id.* at 350 n.12, 355 n.18.
Ex.: *Id.* at 291 nn.14 & 18, 316 nn.4, 6 & 8-9.

(d) *Text and footnote on same page.* To refer to both a page in the text and a footnote that begins on the same page, use an ampersand (&) between the page and the note number. *Bluebook* Rule 3.2(b).

Ex.: The Union also maintains that the grievant's actions are covered by the "routine use" exception to the Privacy Act.[1]

[1] *Id.* at 9 & nn.4-5.

3.16 Footnote Placement. Footnote numbers should appear at the end of a textual sentence if the footnote relates to the entire sentence. In contrast, if the footnote relates to a specific phrase within a sentence, then the footnote's number should appear within the sentence next to that phrase. If that phrase ends in a punctuation mark – such as comma, semicolon, or period – then the footnote should *follow* the punctuation mark. But where the phrase ends with a dash or colon, the footnote number must *precede* the dash or colon. *Bluebook* Rule 1.

Ex.: This is sentence one.[1] Sentence two contains two propositions;[2] however, only one of these – this one[3] – is surprising. Recall one thing[4]: footnote numbers precede colons and dashes.

3.17 Sections and Subsections

(a) *Multiple sections.* Indicate that you are citing to two consecutive sections of the same regulation or statute with double section symbols and use a hyphen between the section numbers. *Bluebook* Rule 3.3(b). Separate non-consecutive sections with commas. *Id.* Generally, retain all digits. *See id.*

Ex.: 12 U.S.C. §§ 481-486.
Not this: 12 U.S.C. §§ 481-86.
Ex.: 5 U.S.C. §§ 7106, 7116, 7121.

(b) *CBA articles and section in citations.* In citations, "Article" should be abbreviated "Art.," and "Section" should be indicated by "§."

Ex.: The Arbitrator found that Article 4, Section 3(b) of the parties' collective bargaining agreement (CBA) required notice and bargaining before making changes to working conditions.[1]

[1] Award at 12 (citing CBA Art. 4, § 3(b)).

But in a textual sentence discussing contract provisions, write out "Article" and "Section" because the Authority does not use "§" in textual sentences when referring to sections of CBAs. *See* Authority Drafting Guide Rule 2.16(b).

Ex.: Article 3, Sections 4 and 7, provide that . . . .

(c) *Do not use "et seq."* Provide inclusive section numbers. *Bluebook* Rule 3.3(b).

Ex.: Under the Federal Service Labor-Management Relations Statute (the Statute),[1] . . . .

[1] 5 U.S.C. §§ 7101-7135.

Not this: Under the Federal Service Labor-Management Relations Statute (the Statute)[1] . . . .

[1] 5 U.S.C. § 7101 *et seq.*

(d) *Subsections.* Use only one section symbol ("§") to cite to two *sub*sections within a single section. *Bluebook* Rule 3.3(b).

Ex.: 5 U.S.C. § 7116(a)(1), (5), (8).
Not this: 5 U.S.C. §§ 7116(a)(1), (5), (8).

But, when citing multiple *sub*sections within different sections, use two section symbols. *Id.*

Ex.: 5 U.S.C. §§ 7116(a)(1), 7117(a)(4), 7118(c)(1).
Not this: 5 U.S.C. § 7116(a)(1), 7117(a)(4), 7118(c)(1).

Separate consecutive *sub*section numbers with a hyphen; separate non-consecutive *sub*section numbers with a comma.

Ex.: 5 U.S.C. § 7116(a)(1)-(5).
Ex.: 5 U.S.C. § 7116(a)(1), (5), (8).

And, in a textual sentence, use "and" when discussing multiple subsections.

Ex.: In support of this argument, the Union cites 5 U.S.C. § 7116(a)(1), (5), and (8).

(e) "*Id.*" Use "*id.*" to refer to two sections of the same statute or regulation, but do not use "at" before the section symbol. *Bluebook* Rule 3.3.

Ex.: The Authority's Regulations provide that a union may file a petition for review of negotiability issues with the Authority following service on the union of the agency's allegation of nonnegotiability.[1] A union may obtain a written allegation of nonnegotiability by making a written request for such an allegation from the agency.[2] A union may also file a petition for review based on an agency's unsolicited written allegation that a matter is outside the duty to bargain.[3]

[1] 5 C.F.R. § 2424.21(a).
[2] *Id.* § 2424.21(b).
[3] *Id.* §§ 2424.11(c), 2424.21(b).

Not this: The Authority's Regulations provide that a union may file a petition for review of negotiability issues with the Authority following service on the union of the agency's allegation of nonnegotiability.[1] A union may obtain a written allegation of nonnegotiability by making a written request for such an allegation from the agency.[2] A union may also file a petition for review based on an agency's unsolicited written allegation that a matter is outside the duty to bargain.[3]

[1] 5 C.F.R. § 2424.21(a).
[2] *Id.* at § 2424.21(b).
[3] 5 C.F.R. §§ 2424.11(c), 2424.21(b).

(f) *Lowercase "L."* When used as a subdivision, lowercase "L" should be italicized to distinguish it from the numeral "1." *Bluebook* Rule 7(d).

Ex.: 5 U.S.C. § 552(*l*).
Not this: 5 U.S.C. § 552(l).

§ 4 Quotations

4.1 Alterations and Omissions in Quotations

(a) *Brackets.* Indicate alterations to original text with brackets ([ ]). *Bluebook* Rule 5.2(a). For example, when changing a letter from upper to lower case, or vice versa, or when substituting letters, words, or terms, insert brackets to indicate the altered text.

Ex.: The Arbitrator found that "the [Agency] did not discriminate against the [g]rievant."
Ex.: The Arbitrator found that the grievant was "required [to] study outside [of] regular working hours [in order] to pass training examinations."

(b) *Empty brackets.* Indicate an alteration that omits letters from a common root word with empty brackets. *Bluebook* Rule 5.2(b).

Ex.: Original text:
The grievant's work was unacceptable, and he failed to attend a mandatory training.

Example quotation:
The Arbitrator found that the "grievant[] . . . failed to attend a mandatory training."

(c) *Ellipses.* Indicate the omission of a word or words with an ellipsis (. . .) – three periods separated by nonbreaking spaces to take the place of the omitted word(s). Do not use an ellipsis when words are merely altered. *Bluebook* Rule 5.3.

Ex.: Original text:
The Arbitrator ignored the evidence and failed to apply Article 4 to properly permit Local 17 to represent the grievant at the meeting.

Example quotation:
The Union argues that "the Arbitrator . . . failed to apply Article 4 to properly permit [the Union] to represent the grievant at the meeting."

Not this: The Union argues that "[t]he Arbitrator . . . failed to apply Article 4 to properly permit [the Union] . . . to represent the grievant at the meeting."
Not this: The Union argues that "the Arbitrator [] failed to apply Article 4 to properly permit [the Union] . . . to represent the grievant at the meeting."

(d) *Using quoted language as a phrase or clause.* When using quoted language as a phrase or clause, do not indicate the omission of matters before or after a quotation mark. *Bluebook* Rule 5.3(a); *see also* Authority Drafting Guide Rules 4.1(b) and 4.1(c).

Ex.: The Union further claims that, "by pursuing the issues of the grievance throughout the grievance procedure and at arbitration, the [A]gency demonstrated its intent to argue the case on the merits."[1]

[1] *Id.*

Not this: The Union further claims that, ". . . by pursuing the issues of the grievance throughout the grievance procedure and at arbitration, the [A]gency demonstrated its intent to argue the case on the merits. . . ."[1]

[1] *Id.*

But when omitting language within a quoted phrase or clause, use an ellipsis.

Ex.: Crediting this testimony, the Arbitrator found that the reclassifications could have a "domino effect" that "[u]timately . . . could have [affected] which employees might receive an award."[1]

[1] *Id.* at 28.

(e) *Using quoted language as a full sentence.* When your entire sentence is a quotation, indicate omissions from the original text at the end of the sentence with an ellipsis plus the sentence's closing punctuation mark, such as an additional period. *Bluebook* Rule 5.3(b).

Ex.: "Each [g]rievant was harmed and . . . to make the [g]rievants whole, it is appropriate to order that each [g]rievant be compensated . . . ."[1]

[1] *Id.* at 24.

Ex.: The Arbitrator framed the issue as: "Whether the Agency violated the CBA, and, if so, what is the appropriate remedy . . . ?"[1]

[1] *Id.* at 5.

(f) *Avoid "sic" where possible.* Correct errors in quotations (using brackets), and avoid using [sic] when possible. *See* Authority Drafting Guide Rule 1.4.

Ex.: When Congress amended the FLSA in 1974 to extend its coverage to certain federal employees, it indicated that OPM's authority must be exercised "in a manner that is consistent with DOL's implementation of the FLSA," and so as to ensure that "any employee entitled to overtime compensation under [the] FLSA receives it under the civil service rules."[1]

[1] *AFGE v. OPM*, 821 F.2d 761, 770 (D.C. Cir. 1987).

Not this: When Congress amended the FLSA in 1974 to extend its coverage to certain federal employees, it indicated that OPM's authority must be exercised "in a manner that is consistent with DOL's implementation of the FLSA," and so as to ensure that "any employee entitled to overtime compensation under FLSA [*sic*] receives it under the civil service rules."[1]

[1] *AFGE v. OPM*, 821 F.2d 761, 770 (D.C. Cir. 1987).

4.2 Quotations of Fifty or More Words

(a) *Block format.* Place quotations of fifty or more words in block format: (1) no paragraph indentations; (2) initial and terminal quotation marks omitted; and (3) 0.5" indentations on each side. *Bluebook* Rule 5.1(a)(i).

Ex.: The Union presented a grievance challenging the reprimand.[1] The grievance was unresolved and was submitted to arbitration.[2] The Arbitrator stated that the following issues were before him:

1. Is this grievance arbitrable?
2. If yes, what standard applies?
3. Did the Agency have good cause to issue [the reprimand] based on [the grievant's] taking ex parte testimony of [an expert]?
4. Was the action of the Agency in issuing the [reprimand] an intrusion into [the grievant's] qualified judicial independence as an [ALJ]?[3]

[1] *Id.*
[2] *Id.* at 3-4.
[3] *Id.* at 4 (internal quotation marks omitted).

(b) *Omission of entire paragraphs.* In a quotation of fifty or more words, indicate the omission of one or more entire paragraphs by inserting and indenting four periods (separated by nonbreaking spaces) on a new line, so that the first of the four periods is aligned with the left side of the block quote. *Bluebook* Rule 5.1(a)(iii). In Authority cases, this arises most commonly in quoting statutory, regulatory, and contractual language.

Ex.: Article 11, "Facilities and Services," provides, in relevant part:

> Section 15
>
> . . . .
>
> (B) The parties recognize that building specifications and floor plans are proper subjects to be negotiated between the parties prior to implementation.

Ex.: Section 2425.2 of the Authority's Regulations provides, in relevant part:

> (c) *Methods of service of arbitration award; determining date of service of arbitration award for purposes of calculating time limits for exceptions*. . . . The following rules apply to determine the date of service for purposes of calculating the time limits for filing exceptions . . . :
>
> (1) If the award is served by regular mail, then the date of service is the postmark date or, if there is no legible postmark, then the date of the award; for awards served by regular mail, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.
>
> . . . .
>
> (3) If the award is served by e-mail or fax, then the date of service is the date of transmission, and the excepting party will not receive an additional five days for filing the exceptions.

(c) *Footnotes.* When inserting your own footnote within a block quotation, place superscripted brackets around the footnote number to clarify that the footnote is not part of the quoted text. But when placing a footnote at the end of a block quotation to indicate the citation for the quotation, do not bracket the footnote. *See Bluebook* Rule 5.1(a)(ii).

Ex.:

When the grievance was unresolved, the parties proceeded to arbitration, and the Arbitrator framed the issues as follows:

> Did the Agency violate Article 32 or 33 of the Master Agreement[1] and/or the Fair Labor Standards Act [(FLSA)] if it indeed required, or suffered or permitted, [the grievant] to report to duty [fifteen] minutes prior to his assigned start time . . . each day . . . ?
>
> If so, what shall be the appropriate remedy?[2]

[1] Article 32 states, in relevant part, "Employees working in excess of eighty (80) hours a pay period will be given a choice of compensatory time or overtime pay." Award at 9-10 (quoting Art. 32, § 4.3). Article 33 states, in pertinent part, "An employee shall neither be compelled nor permitted to work overtime without being compensated." *Id.* at 10 (quoting Art. 33, § 4).
[2] *Id.* at 11.

How To Do Create Superscripted Brackets:
Highlight the bracket, go to "Home" tab, click on the bottom right corner of the "Font" sub-tab to open the menu, click the "Superscript" check-box. Or, after highlighting the bracket, either press CTRL+SHIFT+EQUAL SIGN or click on the "x^2" button.

4.3 Quotations of Forty-Nine or Fewer Words

(a) *Do not place in block format.* Do not maintain the original paragraph structure of quotations of forty-nine words or fewer except when the quoted material would commonly be set off from the text, such as negotiability proposals and provisions. *See Bluebook* Rule 5.1(b)(iii).

(b) *Periods and commas at the end of a quotation.* When using quoted language as a phrase or clause, a comma or period that you insert *at the end of the quotation*, as the punctuation for *your* sentence, does not need to be bracketed to indicate that this is an alteration from the quoted material. *Bluebook* Rule 5.1(b)(iv).

Ex.: The Authority held that, under COPRA, "after-hours studying constitutes 'work.'"[1]

[1] *U.S. DHS, CBP*, 66 FLRA 745, 747 (2012).

Not this: The Authority held that, under COPRA, "after-hours studying constitutes 'work[.]'"[1]

[1] *U.S. DHS, CBP*, 66 FLRA 745, 747 (2012).

Ex.: The Authority noted that "an assertion that an arbitrator's findings were adverse to the excepting party . . . does not establish bias," and that "disagreement with an arbitrator's evaluation of evidence" does not demonstrate that the arbitrator failed to provide a fair hearing.[1]

[1] *AFGE, Local 1938*, 66 FLRA 741, 743 (2012).

Not this: The Authority noted that "an assertion that an arbitrator's findings were adverse to the excepting party . . . does not establish bias[,]" and that "disagreement with an arbitrator's evaluation of evidence" does not demonstrate that the arbitrator failed to provide a fair hearing.[1]

[1] *AFGE, Local 1938*, 66 FLRA 741, 743 (2012).

Ex.: Original text:
The Agency did not violate Article 4. The Agency also did not violate Article 7 when it moved the grievant to a different cubicle because that did not constitute discipline under the agreement. However, the Agency's subsequent suspension of the grievant without warning violated the procedural requirements of Article 12, and, therefore, the Agency violated the agreement.

Example quotation:
The Arbitrator found that the Agency "did not violate Article 4," and "did not violate Article 7 . . . because [the reassignment] did not constitute discipline," but found that "the Agency's subsequent suspension of the grievant . . . violated the procedural requirements of Article 12."[1]

[1] Award at 14.

Not this: The Arbitrator found that the Agency "did not violate Article 4[,]" and "did not violate Article 7 . . . because [the reassignment] did not constitute discipline[,]" but found that "the Agency's subsequent suspension of the grievant . . . violated the procedural requirements of Article 12[.]"[1]

[1] Award at 14.

But this rule applies only to commas or periods placed at the *end* of the quotation. Commas or periods placed anywhere other than at the end of a quotation should be bracketed. *Bluebook* Rule 5.2(a); Authority Drafting Guide Rule 4.1(a).

(c) *Other punctuation at the end of a quotation.* Punctuation marks that are not commas or periods should be placed within the quotation marks only if they appear in the original. If the insertion of a punctuation mark that is not a comma or period is necessary, then the alteration should be shown by bracketing the inserted punctuation. But avoid bracketed punctuation wherever possible. So, when creating a list of quotations, place the semicolons outside of the quotation marks, as in the example below. The insertion of a question mark that was not in the original text should be indicated by bracketing the question mark. *See Bluebook* Rule 5.1(b)(iv).

Ex.: When the grievance was not resolved, it was submitted to arbitration, where the Arbitrator framed the relevant issues as: (1) "Is the grievance non-arbitrable as a classification matter[?]"; and (2) "Did the Agency violate the [parties' agreement] . . . when it changed and implemented a new career path for [criminal investigators][,] thereby creating an unjust promotional system which in essence results in a reduction in pay and/or grade, [and, if] so, what is the proper remedy?"[1]

[1] *Id.* at 10-11.

4.4 Introducing a Quotation. For brevity, when quoting documents with many sections and subsections, such as CBAs, statutes, and regulations, quote only the pertinent wording. Indicate that you are quoting only the relevant portion(s) of the CBA, statute, or regulation by introducing the quotation with a phrase such as "provides, in pertinent part" or "states, in relevant part."

Ex.: Section 2425.5 of the Authority's Regulations provides, in pertinent part:

> If you choose to file an opposition, and you dispute any assertions that have been made in the exceptions, then you should address those assertions. . . . You must provide copies of any documents upon which you rely . . . unless the Authority can easily access those documents . . . or the excepting party provided them with its exceptions.[1]

[1] 5 C.F.R. § 2425.5.

Ex.: Section 7118(a) of the Statute provides, in relevant part:

> (1) If any agency or labor organization is charged by any person with having engaged or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. . . .
>
> . . . .
>
> (3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed for the hearing.[1]

[1] 5 U.S.C. § 7118(a).

Appendix A
Case Captions: Decision Titles

1.1 All Case Types

ORDER DENYING MOTION FOR RECONSIDERATION

ORDER GRANTING MOTION FOR RECONSIDERATION

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION

~~ORDER DENYING REQUEST FOR RECONSIDERATION~~
(This should no longer be used because the regulatory term is "motion" for reconsideration. 5 C.F.R. § 2429.17.).

1.2 Arbitration (AR)

DECISION
(Used when resolving at least one exception on the merits, even if dismissing one or more other exceptions procedurally.).

ORDER DISMISSING EXCEPTION
(Used when only one exception, which is dismissed procedurally.).

ORDER DISMISSING EXCEPTIONS
(Used when dismissing all exceptions procedurally.).

DECISION ON REMAND

1.3 Negotiability (NG)

DECISION AND ORDER ON A NEGOTIABILITY ISSUE
(Used when case involves only one disputed proposal or provision.).

DECISION AND ORDER ON NEGOTIABILITY ISSUES
(Used when case involves more than one proposal or provision.).

DECISION AND ORDER ON REMAND

1.4 Unfair Labor Practice (CA/CO)

DECISION AND ORDER

DECISION

(Rare: Used only when remanding to Judge without ruling on his/her recommended Order. There is no Order regarding the Judge's decision.).

DECISION AND ORDER ON REMAND

1.5 Representation (RP)

ORDER GRANTING APPLICATION FOR REVIEW

(Also referred to as a "bare grant.").

ORDER DENYING APPLICATION FOR REVIEW

DECISION AND ORDER ON REVIEW

(Most commonly used following issuance of a "bare grant.").

ORDER DISMISSING APPLICATION FOR REVIEW

(Procedural dismissal.).

ORDER GRANTING APPLICATION FOR REVIEW AND REMANDING TO THE REGIONAL DIRECTOR

ORDER GRANTING IN PART AND DENYING IN PART APPLICATION FOR REVIEW

1.6 Foreign Service Cases (FS)

DECISION (FS-AR)

ORDER DISMISSING EXCEPTION(S) (FS-AR)

DECISION AND ORDER ON NEGOTIABILITY ISSUE(S) (FS-NG)

DECISION AND ORDER (ULP)

ORDER (ULP)

1.7 Miscellaneous (MC)

DECISION AND ORDER

DECISION AND ORDER VACATING STAY

ORDER DENYING MOTION FOR STAY

DECISION AND ORDER ON PETITION FOR AMENDMENT OF RULES

DECISION ON PETITION FOR AMENDMENT OF RULES

ORDER DENYING MOTION FOR STAY OF ELECTION

ORDER DENYING MOTION

ORDER DENYING REQUEST FOR GENERAL RULING

ORDER DENYING REQUEST FOR ENFORCEMENT

Appendix B
Bluebook T6: Case Names in Citations

T6 CASE NAMES AND INSTITUTIONAL AUTHORS IN CITATIONS

Abbreviate case names in citations by abbreviating any word listed below (**rule 10.2.2**). It is permissible to abbreviate other words of eight letters or more if *substantial* space is thereby saved and the result is unambiguous in context. (Thus, it would be permissible to abbreviate "Encyclopaedia Britannica" to "Encyc. Britannica," "Attorney" to "Att'y," or "Petroleum" to "Petrol.") Unless otherwise indicated, plurals are formed by adding the letter "s."

Academy	Acad.	Cooperative	Coop.
Administrat[ive, ion]	Admin.	Corporation	Corp.
Administrat[or, rix]	Adm'[r, x]	Correction[s, al]	Corr.
Advertising	Adver.	County	Cnty.
Agricultur[e, al]	Agric.	Defense	Def.
Alternative	Alt.	Department	Dep't
America[n]	Am.	Detention	Det.
and	&	Development	Dev.
Associate	Assoc.	Director	Dir.
Association	Ass'n	Discount	Disc.
Atlantic	Atl.	Distribut[or, ing]	Distrib.
Authority	Auth.	District	Dist.
Automo[bile, tive]	Auto.	Division	Div.
Avenue	Ave.	East[ern]	E.
Bankruptcy	Bankr.	Econom[ic, ics, ical, y]	Econ.
Board	Bd.	Education[al]	Educ.
Broadcast[ing]	Broad.	Electr[ical, icity, onic]	Elec.
Brotherhood	Bhd.	Employee	Emp.
Brothers	Bros.	Employ[er, ment]	Emp'[r, t]
Building	Bldg.	Engineer	Eng'r
Business	Bus.	Engineering	Eng'g
Casualty	Cas.	Enterprise	Enter.
Cent[er, re]	Ctr.	Entertainment	Entm't
Central	Cent.	Environment	Env't
Chemical	Chem.	Environmental	Envtl.
Coalition	Coal.	Equality	Equal.
College	Coll.	Equipment	Equip.
Commission	Comm'n	Examiner	Exam'r
Commissioner	Comm'r	Exchange	Exch.
Committee	Comm.	Executive	Exec.
Communication	Commc'n	Execut[or, rix]	Ex'[r, x]
Community	Cmty.	Export[er, ation]	Exp.
Company	Co.	Federal	Fed.
Compensation	Comp.	Federation	Fed'n
Condominium	Condo.	Fidelity	Fid.
Congress[ional]	Cong.	Financ[e, ial, ing]	Fin.
Consolidated	Consol.	Foundation	Found.
Construction	Constr.	General	Gen.
Continental	Cont'l	Gender	Gend.

Note: The editors of the Bluebook have made the following online edit to Table T6:

Electr[ic, ical, icity, onic] Elec.

Appendix B
Bluebook T6: Case Names in Citations

Government	Gov't
Group	Grp.
Guaranty	Guar.
Hospital	Hosp.
Housing	Hous.
Import[er, ation]	Imp.
Incorporated	Inc.
Indemnity	Indem.
Independent	Indep.
Industr[y, ies, ial]	Indus.
Information	Info.
Institut[e, ion]	Inst.
Insurance	Ins.
International	Int'l
Investment	Inv.
Laboratory	Lab.
Liability	Liab.
Limited	Ltd.
Litigation	Litig.
Machine[ry]	Mach.
Maintenance	Maint.
Management	Mgmt.
Manufacturer	Mfr.
Manufacturing	Mfg.
Maritime	Mar.
Market	Mkt.
Marketing	Mktg.
Mechanic[al]	Mech.
Medic[al, ine]	Med.
Memorial	Mem'l
Merchan[t, dise, dising]	Merch.
Metropolitan	Metro.
Mortgage	Mortg.
Municipal	Mun.
Mutual	Mut.
National	Nat'l
North[ern]	N.
Northeast[ern]	Ne.
Northwest[ern]	Nw.
Number	No.
Opinion	Op.
Organiz[ation, ing]	Org.
Pacific	Pac.
Partnership	P'ship
Person[al, nel]	Pers.
Pharmaceutic[s, al, als]	Pharm.
Preserv[e, ation]	Pres.
Probation	Prob.
Product[ion]	Prod.
Professional	Prof'l
Property	Prop.
Protection	Prot.
Public	Pub.
Publication	Publ'n
Publishing	Publ'g
Railroad	R.R.
Railway	Ry.
Refining	Ref.
Regional	Reg'l
Rehabilitation	Rehab.
Reproduct[ion, ive]	Reprod.
Resource[s]	Res.
Restaurant	Rest.
Retirement	Ret.
Road	Rd.
Savings	Sav.
School[s]	Sch.
Science	Sci.
Secretary	Sec'y
Securit[y, ies]	Sec.
Service	Serv.
Shareholder	S'holder
Social	Soc.
Society	Soc'y
South[ern]	S.
Southeast[ern]	Se.
Southwest[ern]	Sw.
Steamship[s]	S.S.
Street	St.
Subcommittee	Subcomm.
Surety	Sur.
System[s]	Sys.
Technology	Tech.
Telecommunication	Telecomm.
Tele[phone, graph]	Tel.
Temporary	Temp.
Township	Twp.
Transcontinental	Transcon.
Transport[ation]	Transp.
Trustee	Tr.
Turnpike	Tpk.
Uniform	Unif.
University	Univ.
Utility	Util.
Village	Vill.
West[ern]	W.

Appendix C
Bluebook T10: Geographical Terms

T10 GEOGRAPHICAL TERMS

The following list provides abbreviations for geographical locations for use in case citations (**rules 10.2.2** and **10.4**), names of institutional authors (**rule 15.1(c)**), periodical abbreviations (**rule 16** and **table T13**), foreign materials (**rule 20.1**), and treaty citations (**rule 21.4.2**).

T10.1 U.S. states, cities, and territories

States

▸ Alabama	Ala.	▸ Colorado	Colo.
▸ Alaska	Alaska	▸ Connecticut	Conn.
▸ Arizona	Ariz.	▸ Delaware	Del.
▸ Arkansas	Ark.	▸ Florida	Fla.
▸ California	Cal.	▸ Georgia	Ga.
▸ Hawaii	Haw.	▸ New Mexico	N.M.
▸ Idaho	Idaho	▸ New York	N.Y.
▸ Illinois	Ill.	▸ North Carolina	N.C.
▸ Indiana	Ind.	▸ North Dakota	N.D.
▸ Iowa	Iowa	▸ Ohio	Ohio
▸ Kansas	Kan.	▸ Oklahoma	Okla.
▸ Kentucky	Ky.	▸ Oregon	Or.
▸ Louisiana	La.	▸ Pennsylvania	Pa.
▸ Maine	Me.	▸ Rhode Island	R.I.
▸ Maryland	Md.	▸ South Carolina	S.C.
▸ Massachusetts	Mass.	▸ South Dakota	S.D.
▸ Michigan	Mich.	▸ Tennessee	Tenn.
▸ Minnesota	Minn.	▸ Texas	Tex.
▸ Mississippi	Miss.	▸ Utah	Utah
▸ Missouri	Mo.	▸ Vermont	Vt.
▸ Montana	Mont.	▸ Virginia	Va.
▸ Nebraska	Neb.	▸ Washington	Wash.
▸ Nevada	Nev.	▸ West Virginia	W. Va.
▸ New Hampshire	N.H.	▸ Wisconsin	Wis.
▸ New Jersey	N.J.	▸ Wyoming	Wyo.

Cities

Abbreviations for city names may also be composed from state name abbreviations above. For example, "Oklahoma City" should be shortened to "Okla. City."

▸ Baltimore	Balt.	▸ Los Angeles	L.A.
▸ Boston	Bos.	▸ New York	N.Y.C.
▸ Chicago	Chi.	▸ Philadelphia	Phila.
▸ Dallas	Dall.	▸ Phoenix	Phx.
▸ District of Columbia	D.C.	▸ San Francisco	S.F.
▸ Houston	Hous.		

Territories

▸ American Samoa	Am. Sam.
▸ Guam	Guam
▸ Northern Mariana Islands	N. Mar. I.
▸ Puerto Rico	P.R.
▸ Virgin Islands	V.I.