

POPA CBA PROPOSALS

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ARTICLE I

RECOGNITION AND UNIT DETERMINATION

Section 1

In recognition of the fact that a majority of the professional employees of USPTO have selected the Association as their exclusive representative and that a certification has been issued to this effect, the Commissioner hereby reaffirms their recognition of the Association as the exclusive representative of the employees in the following unit, hereinafter called the "Unit":

All professional employees of the Office as determined in the unit arbitration decisions of Mr. Rocco C. Siciliano (81-Comm PATO-1 and PATO-2) dated July 31, 1964, and as modified by A/SLMR No. 856, excluding (1) any management officials or supervisors; (2) confidential employees; (3) employees engaged in personnel work in other than a purely clerical capacity; and (4) trademark professionals.

Section 2

- A. The Agency shall notify the Association in writing of all new positions either simultaneous with the posting for such positions or, in the case of non-posted positions, simultaneous with the filling of such positions, and shall indicate the Agency's view as to which of these positions are included in the Association's bargaining unit.
- B. Within one month after the transmission of a list as provided in Section 2A the parties will meet. At this meeting the Agency shall present the factual basis for its view as to bargaining unit designations and the parties will discuss the reasons for such designations. The Association shall present, within a reasonable period of time, the factual basis for its view if upon investigation it has a disagreement. If the parties thereafter continue to disagree as to the appropriate bargaining unit status of any employee or position, the Agency, within two months from receiving the factual basis for the Association view, will present the reasons for its position in writing and then the Association, within two months from receiving the written position of the Office, will respond in writing with the reasons for its view.

ARTICLE 2

PRECEDENCE OF LAW, REGULATION AND OTHER MATTERS

Section 1

In the administration of this Agreement, officials and employees are governed by (1) existing or future statutes, (2) regulations issued by the Department of Commerce prior to the effective date of this Agreement and not inconsistent with this agreement, (3) government wide rules and regulations prescribed prior to the effective date of this Agreement or which are issued subsequently and are not inconsistent with this Agreement and are outside of the scope of bargaining. Except as otherwise provided, other than a rule or regulation implementing 5 USC 2302, no rule or regulation which is in conflict with this Agreement and which was prescribed after the effective date of this Agreement shall be enforced.

Section 2

The unwritten practices of the parties shall continue, absent written notification by either party of their intent to discontinue or modify a particular practice. Upon the request of either party, the parties shall bargain over the change to the extent consistent with law.

ARTICLE 3
DEFINITIONS

Day - Unless otherwise noted in this agreement, "day" shall mean a calendar day, including Saturday, Sunday and Holidays.

Business Day - Unless otherwise noted in this agreement, "Business day" is any weekday, Monday-Friday, excluding Federal holidays or days when the office is closed for any reason.

Business hours – Unless otherwise specified, 8:30AM-5:00PM, Monday-Friday.

Counting days in a time period - In computing any period of time prescribed or allowed in the Contract, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. When the day or the last day fixed by any time period for taking action falls on a Saturday, Sunday, Federal holiday, or day when the office is closed for any reason, the action may be taken on the next succeeding day that is not a Saturday, Sunday, Federal holiday, or day when the office is closed for any reason.

Association/POPA/Union are used interchangeably to describe the Patent Office Professional Association.

Officer/Association Official/Union Representative/Delegate are used to describe the elected Association representatives or representatives designated by the Association President.

Employee/member/bargaining unit member – unless otherwise described in this agreement, a person who is exclusively represented by the Association, per Article 1.

Association member/dues paying member are used interchangeably to describe an employee who is a dues-paying member to POPA.

Agency/USPTO/management/Office are used interchangeably to describe management of the United States Patent and Trademark Office.

Agency Official/Manager/member of Management are used interchangeably to describe a manager.

“Written” or “in writing” – includes documentation in electronic form and that can be conveyed via electronic means (e.g. email), unless otherwise specified.

Technology Center (TC) - organizational structure of the patent examining corps.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF MANAGEMENT

Section 1

Management officials of the Agency shall retain the right:

- A. To determine the mission, budget, organization, number of employees, and the internal security practices of the agency;
- B. To hire, assign, direct, layoff and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which operations shall be conducted;
- D. With respect to filling positions, to make selections for appointments from:
 - (1) Among properly ranked and certified candidates for promotions; or
 - (2) Any other appropriate source.
- E. To take whatever actions may be necessary to carry out the mission during emergencies;
- F. Section 7106(A) rights are subject to Section 7106(B) rights. The Agency will bargain over permissive Section 7106(B)(1) matters.

Section 2

The Agency shall respond in writing to written requests from the Association. Where reasonably possible, the response shall be substantively responsive to the request and provided to the Association within two weeks from the date the request was received.

Section 3

The rights of the Agency to take actions or to effectuate changes shall be limited to the provision of Article 14 on Mid-Term Bargaining.

Section 4

- A. In order that members of the bargaining unit and the officers of the Association may be better informed as to their rights, obligations and responsibilities, the Agency will supply to the Association, as they are issued, a copy of all duly published Agency policies, United States Patent and Trademark Office Administrative Instructions, Department of Commerce Administrative Orders, and Executive Orders applicable to USPTO.
- B. Any laws, regulations and policies relevant to an employee's performance, conduct or employment in the possession of the office shall be made available for inspection and study by the Association and individual members of the Unit, if such material is not otherwise reasonably available. Upon request, a copy of the relevant portion(s) of such material shall be provided to the Association or the requesting employee if the request is not unreasonable and the cost is not excessive.
- C. All bargaining unit published policies directly applicable to an employee shall be available for their inspection and study at the office of their second line supervisor.
- D. Each affected employee shall be given an electronic copy of newly published Agency policies.

Section 5

Disciplinary and adverse actions for misconduct will be taken for just and sufficient cause and will be in accordance with all applicable regulations and laws.

Section 6

Within the first quarter of each fiscal year, the head of an operating unit at the TC Director level or equivalent shall conduct a meeting to notify unit employees of all records maintained by the operating unit which identify the employee by name or other identifier. At this meeting, POPA shall have the opportunity to have a representative whose role shall be limited to observing or asking questions.

The Agency, within the first quarter of each fiscal year, shall publish for the use of each unit employee and distribute to the Association a directory of each system of records maintained with respect to employees at management levels above the head of the operating unit, indicating the title and room location (e.g., Directors' offices), and the electronic location of such system of records and the categories of records (as exemplified by those specified in the Federal Register, Vol. 49, No. 4, pp. 913-921) contained within the system of records. "Records" include both paper and electronic records and shall refer only to that information which may be retrieved by the employee's name or other identifier. Access to such system shall be governed by Article 6 (employee rights), Sections 6 and 11, but subject to the laws and regulations of higher authority.

Section 7: Notification of Formal Discussions

Generally, the Agency will provide a minimum of 1 business days' notice to the Association of any formal discussion with bargaining unit members.

Section 8: Notification of Rights to Representation in Investigatory Discussions

Annually the Agency will notify bargaining unit members of their right to representation at discussions during an investigation of alleged misconduct when the employee has a reasonable belief that participating in the discussion will result in a disciplinary action against the employee directed to participate in the discussion. The notice will be posted electronically.

Section 9: List of POPA Bargaining Unit Employees

Not later than one calendar month after the effective date of this Agreement, and by October 31 of each year thereafter, the Agency will provide the Association with a list of all POPA Bargaining Unit employees as of September 30. This list shall set forth for each employee:

- A. Their name,
- B. Pay plan/series/grade,
- C. Bargaining unit code, and

D. Organization/cost center.

ARTICLE 6
EMPLOYEE RIGHTS

Section 1

Employees in the Association shall have the right, freely and without fear of penalty or reprisal, to join or assist the Association or to refrain from any such activity, and each employee shall be protected in the exercise of such right.

Section 2

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

Section 3

Nothing in this agreement shall preclude an employee from bringing matters of personal concern to the attention of appropriate Agency officials.

Section 4

This agreement shall not preclude an employee from exercising grievance or appellate rights established by law or regulations; or from choosing their own representative in a grievance or appellate action, except when presenting a grievance under the procedure provided in Article 12, the limitations set forth therein must be followed.

Section 5

The following rights shall apply to communications about an employee when the source, either oral or written, is not from within the employee's technology group or its equivalent.

A. If the communication contains a complaint against an employee it shall not be later used against an employee unless:

- (1) it has been reduced to writing, including notation of the date;
- (2) any investigation with respect to it has been reduced to writing with specificity or there is adequate written justification for why no investigation was conducted;
- (3) any oral response by the supervisor to the complaint has been later reduced to writing with the date and approximate length of the conversation noted;
- (4) all written responses to the complaint have been retained;
- (5) there is a written account of the employee's response, if any, with respect to the complaint; or there is an adequate written justification of why the complaint or relevant matters arising out of investigation or responding to the complaint were not disclosed to the employee, and opportunity given for comment by him/her; and
- (6) the above has been provided to the employee at the time the communication is used as the basis for any action which is to the disadvantage of the employee. Such action cannot be based on a communication which was received more than 90 days prior to the action unless:
 - a. the complaint and/or relevant matters arising out of the investigation of, or the responses to, the complaint were disclosed to the employee and a reasonable opportunity given him/her to comment in writing within the 90 day period.

- b. there is an ongoing investigation that specifically prohibits disclosure to the employee.

(7) When an employee has been afforded a reasonable opportunity to comment in writing within the 90-day period, any action which is to the disadvantage of the employee cannot be taken more than 12 months after the communication was received.

- B. If the communication compliments the employee, a copy shall be given to the employee or if the communication was oral, it shall be reduced to writing and given to the employee.
- C. Documents concerning admonishment, warning, caution or similar or like matters unrelated to performance are temporary and shall not be kept in any employee's record or file for longer than one year after their creation.

Section 6

- A. In all matters of or concerning personnel records the Agency shall abide by applicable laws and regulations of higher authority and this agreement.
- B. Each employee of the association shall have the right to inspect their personnel records and have them amended upon a showing that they are inaccurate, untimely or incomplete. The request to inspect shall be made to the Office of Human Resources or other office in which such records are kept.
- C. Each employee of the association shall be furnished a copy of any paper added to their Official Personnel Folder which relates to their performance, conduct, or potential provided such is not prohibited by the FPM or any Government-wide law or regulation, and such employee shall have an opportunity to submit and to have placed in said OPF a brief written statement concerning such paper which is furnished to them.

Section 7

Employees will be treated equitably and fairly by the Agency. Therefore, employees who believe they have been personally subjected to disparate treatment or unreasonable acts by management shall have the right to contest such treatment by use of the negotiated grievance procedures set forth in Article 12.

Section 8

- A. When a representative of the Agency wishes to meet with an employee for the purpose of obtaining information from them, which the employee reasonably believes may be used to determine whether disciplinary action shall be taken against the employee, the following procedure shall be followed:

A manager in the employee's chain of command shall send a written communication to the employee that indicates whether the meeting is voluntary or mandatory. The written communication shall provide notification of the general nature of the meeting and the employee's right to have a union representative present prior to the commencing the meeting. Other time for the meeting and the appropriate time code will be provided in writing.

a) If the meeting is voluntary, the meeting may be declined by the employee.

b) If the meeting is mandatory, the manager shall issue an appropriate written invitation so stating. A manager in the employee's chain of command shall be present at the meeting,

- B. In addition to the provisions of 5 USC § 7114 (a) (2) (b) allowing an employee to have a union representative present at a meeting when they reasonably believe that an investigation, as part of that meeting, could lead to disciplinary action, the Agency representative conducting the meeting shall notify the employee of their right to a union representative to attend such a meeting.,
- C. If the employee requests a union representative, the Agency shall be obligated to wait a reasonable amount of time to allow the employee the opportunity to secure representation, before proceeding with the meeting.
- D. None of the preceding subparagraphs shall apply to investigations, inquiries, or counselling sessions that apply solely to performance-based actions.

Section 10

- A. The Agency will notify the Association and the affected employees of a proposed substantial change in a position description, such as a significant addition or reduction of duties or a change in grade level. The employees and the Association will be provided with a reasonable period for comment on the proposed language which will not unduly delay issuance of the position description. The opportunity to comment by itself does not create or acknowledge a right to negotiate. Minor changes, such as clarifying language or a change in organization designation or position titles which are unassociated with other more important changes, will create the duty to notify the employee and the right of the employee to comment, but no such duty or right shall extend to the Association.
- B. The Agency will provide the employees with the final amended position description upon its issuance. The Agency will provide the Association with the final amended position description upon its issuance only when a substantial change is involved.
- C. The employees shall have the right to rely on the accuracy of their position description. An employee cannot be presumed to be aware of changes in a position description before the employee receives a final amended position description.
- D. The Agency will provide the Association with a copy of all newly proposed position descriptions.
- E. When an employee requests a desk audit, the Agency shall conduct the audit within a reasonable time under the circumstances.

Section 11

- A. The right of an employee, or their representative, to information provided in this Article, shall not be diminished, or otherwise adversely affected by such information being stored in paper or machine systems, such as computers.

- B. Similarly, information made available to the Agency by computer enhancements shall not be denied an employee where such denial will adversely affect an employee's right to information otherwise required by this Article.
- C. If there are alternate means of providing such information, the Agency may choose the least costly or time-consuming alternate, if to do so does not prejudice the employee's rights to prompt and meaningful information.

Section 12

- A. An employee covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences:
 - (1) Violation of any law, rule or regulation; or,
 - (2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- B. Such disclosure may be made if it is not specifically prohibited by law and if such information is not specifically required by executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.
- C. The language of this section shall be interpreted in the same manner as similar language in 5 U.S.C. 2302 as interpreted by published decisions of the courts and those adjudicator agencies empowered by Congress to adjudicate "whistleblower" protections.

Section 13

- A. An employee may resign at any time. However, an employee should give reasonable notice of their resignation. The employee's reasons for resigning should be entered in their official records.
- B. Normally, resignations should be in writing or electronic (through eOPF, for example). Requests to withdraw resignations may be declined by the Agency consistent with the provisions of 5 CFR, subpart b, § 715.
- C. The Agency shall not secure any employee's resignation by coercive or deceptive means.
- D. When an employee resigns after receiving written notice of proposed disciplinary or adverse action, the pending action is listed in the employee's records, unless the Agency and the employee agree otherwise. When an employee resigns before receiving written notice of proposed disciplinary or adverse action, no record will be maintained regarding the possibility of such action. All recorded information within control of the Agency specifically related to the incomplete action, except that which is retained in a confidential file maintained by the properly designated official in the Office of Human Resources, shall be destroyed by the Agency immediately after the employee's effective date of resignation.

Section 14

- A. The Agency and the Association jointly encourage employees to participate in the Combined Federal Campaign (CFC).
- B. Financial participation CFC and other charitable campaigns shall be on a strictly voluntary basis.
- C. First and second line supervisors shall not be provided any information as to the fact of, or the amount of, contribution by their subordinates; however, actual individual payroll stubs shall be exempt from this requirement.

- D. (1) Solicitors for contributions shall be volunteers (2) The Agency shall relieve an employee from duties as a solicitor for cause directly related to solicitation activities. (3) No employee who reviews or directs the work of another shall solicit monies from the employees so reviewed or directed. (4) Solicitors shall be granted appropriate official time to engage in the solicitation program.
- E. Employees shall not be asked to disclose the fact of, or the amount of, their contributions or allotments to persons who review or direct those employees.

Section 15

- A. The Agency and the Association jointly encourage employees to donate blood. Participation shall be strictly voluntary.
- B. An employee's supervisor shall grant an employee four hours administrative time to make a blood donation, including recuperation and travel time. The administrative time shall be taken consecutively, beginning at the time the employee departs to make the blood donation.
- C. Employees will be released to donate blood unless the employee's absence will create a significant work detriment to the workload of the Agency.

ARTICLE 7
EMPLOYEE OBLIGATIONS

Section 1

Each employee of the unit is presumed to know and is expected to comply with all laws, duly published regulations and policies that relate to their employment and conduct. The fact that a particular law, regulation or policy may not be called to their attention by the Office will not excuse any violation on their part. In such situations when a law, regulation or policy can be reasonably viewed as imposing a requirement or limitation that is not obvious or that does not involve a situation when a reasonable person should have inquired to ascertain whether there was a requirement or limitation, then an employee, who did not have actual notice or knowledge of the law, regulations, or policy, shall not be subject to a penalty more severe than an oral warning, unless the Office can show, with a high burden of proof, that the circumstances warrant a higher penalty.

Section 2

Notwithstanding the fact that there exists no legal requirement for employees to provide a current mailing address, personal phone number or emergency contact to the Office, the parties nevertheless encourage employees to provide a current mailing address, personal phone number, and an emergency contact in HRConnect or equivalent human resources web-based application. Unless required by law, this information shall be kept in strict confidence. The Agency shall not use the information provided by the employee except in an emergency situation.

ARTICLE 8
ASSOCIATION RIGHTS AND OBLIGATIONS

The Association shall have the right to act for and to negotiate agreements covering all employees of the Unit and also shall be responsible for representing the interests of any employee or group of employees within the Unit without discriminating and without regard to employee organization membership, except as provided for in 5 U.S.C. §7114(a) (5) and 5 U.S.C. §7121(b)(3)(B).

Section 2

Management shall furnish the Association with the name of every newly-hired Unit member and his/her initial Art Unit, or equivalent, assignment during the member's initial two weeks of employment.

Section 3

The Association shall have the right to speak to all new Unit employees at an orientation session. The Association will be given adequate notice of the schedule for its presentation. The Association's presentation will not exceed 15 minutes and shall not include any direct solicitation for membership. A reasonable time will be provided for answering questions. The Association will provide and distribute copies of the Agreement and amendments thereto at its presentation.

Section 4

In order to implement the Association's rights under 5 USC 7114 (a) (2) (A) to participate in formal meetings, the Office shall make every effort to provide the Association a minimum of four hours advance notice for such meetings. In any event, such advance notice shall be reasonable under the circumstances and sufficient to allow the Association time to arrange for representation at the formal meeting. If the Association is unable to be represented at a formal meeting or chooses not to be represented, the Office shall promptly prepare a written summary of the meeting at the

Association's request. The Association shall have the right to one representative at such formal discussions.

Section 5

Advance notice under Section 4 shall include:

- A. the time and place of the meeting;
- B. the expected Unit employees and Office representatives at the meeting;
- C. the general nature and subject matter to be discussed, and a copy of any agenda prepared by the Office in advance.

Section 6

- A. Any communication to the Association from the Office that is subject to a response time period started by the serving of the communication, shall be delivered electronically on the date of service to the Association President, the Association Secretary, or any person previously designated by the Association President to receive such communication.
- B. The Office is exempt from the procedure set forth in subsection A when a neutral third party (e.g., arbitrator) specifically requires the communication be filed in a different manner.

Section 7

- A. No member of Management shall deliberately open and/or read mail directed to the Association.

- B. All external mail directed to the Association shall be removed during the initial mail sorting process. Such mail shall not be opened, but, date-stamped, bundled and delivered to the organizational unit of the Association President.

- C. Any Association mail mistakenly opened in the Mail Room shall be identified as mistakenly opened when the Mail Room perceives such a mistake before the mail in question leaves the Mail Room.

Section 8

The Association shall have the right to hold one meeting per year during duty hours to discuss working conditions and related subjects with its members.

The internal affairs of the Association shall not be discussed at this meeting. The Office will grant one hour of administrative leave to all Unit members who attend.

ARTICLE 9

OFFICIAL TIME

Section 1

- A. Association Officials and Representatives shall be authorized official time during duty hours not to exceed the established bank of hours per fiscal year described below for the following activities:
1. to consult and counsel employees concerning personnel practices and policies, working conditions and employment related matters;
 2. to prepare and investigate grievances;
 3. to prepare and investigate matters other than grievances for the purpose of representing employees;
 4. to prepare for any meeting and/or consultations with management officials;
 5. to prepare for joint committee meetings;
 6. to prepare for all presentations before third parties;
 7. to review and respond to memoranda, letters and requests from the Office, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions;
 8. to attend hearings or meetings in the capacity of an observer where an employee has elected to pursue a grievance without Union representation;
 9. to conduct any legitimate representational activity not precluded by statute and not set forth above.
- B. In any fiscal year the time used shall not exceed a bank of 20,000 hours and a separate bank of 1,500 hours for training.
- C. Yearly, the Association will provide to the Employee and Labor Relations Division a list of employees who may use official time. Employees may be added and subtracted from the list at any time during the year.

Section 2

In addition to the bank of hours set forth in Section 1, the Agency shall grant to Association officials reasonable time for:

- A. Preparation for and presentations to any agent of the FLRA, FSIP, MSPB and/or arbitrators;
- B. Preparation for and presentations at any third party proceeding not included in subsection A above, and Ex Parte presentation to other federal agencies;
- C. grievance presentations;
- D. joint committee meetings and authorized activities therefor;
- E. meetings and/or consultations with management officials not included in part C and part D above;
- F. Preparation and meetings with management to informally discuss issues brought up by management or the Association
- G. addressing new employees as provided in Article 8 including presentations at the New Employee Orientation and to new examiners in the Patent Training Academy (or its equivalent);
- H. all activities for which official time is explicitly granted by statute, law, rule or regulation;
- I. preparation for mid-term bargaining.

Section 3

Any activities performed by an employee relating to the internal business of the Association, shall be performed at a time when an employee is not on duty or is on approved leave. Such activities include (1) membership meetings; (2) soliciting union membership; (3) collecting union dues or assessments; (4) campaigning for union office; (5) distributing or posting union literature, notices or authorization cards; and (6) any activities pertaining to the internal management of the union, including executive board meetings.

Section 4

- A. There shall be only one time code for each of the listed categories and not subproject codes. Travel time incident to a particular activity shall be included with that activity.
- B. The Agency shall provide to the Association bi-weekly information on the official time codes used by employees under each category. The information shall include 13 pay period and fiscal year to date totals.

Section 5

- A. No Association official shall be prejudiced or adversely affected by virtue of the fact that the official is authorized or required to spend time performing representational duties.
- B. Whenever an Association official spends, over a one-year period, less than 40% of their duty hours per bi-week on examining related activities, the official, upon returning to substantially full-time examining duties, will be given a reasonable retraining period (without loss of grade or status) of at least 120 days.
- C. During the retraining period, there shall be no formal evaluations with respect to quality and quantity that could result in adverse consequences to the Association official. However, supervisors are encouraged to informally evaluate and counsel officials during the retraining period. After the retraining period, no record shall be kept regarding any informal evaluation. If during that 120-day period there is a reassignment (e.g., a docket change), the retraining period shall be restarted from the date of the reassignment. After the retraining period, the official shall only be formally evaluated by, and in accordance with, regular evaluations and regular evaluation procedures that apply to full time examiners; there shall be no special evaluations for former Association officials.
- D. The parties acknowledge that any examiner who starts without a docket will usually have a pipeline problem for more than six months. The Office will account for this problem in any evaluation given during the first 10 months after the official returns substantially full time to examining duties. An official returning substantially full time to examining duties will have the right to raise the pipeline problem as a defense to any action taken against them.

ARTICLE 10
ASSOCIATION FACILITIES

Section 1

The Agency will continue to provide a larger furnished office, a second private office, two docking stations, a polycom, and two private line telephones for the Association, to provide a confidential place to discuss complaints and other Association matters. The Agency, unless the parties agree otherwise, may not relocate such offices or alter their size or configuration except where it is necessary to meet the Agency's obligations under Article 36 (Office Space and Physical Facilities). However, the larger office shall not be reduced to a size less than 230 square feet, and the second office shall not be reduced to a size less than 150 square feet. Use of the offices is subject to the following conditions:

- A. The Agency will not be responsible for Association property located within the office space provided to them;
- B. The Association will exercise due safety and security precautions when using such space, inspectable by the Agency when accompanied by an Association official.
- C. The Association may use the telephone, computer, printer and other government equipment to the extent permitted by law and regulation.
- D. The Agency will provide for each POPA officer a private, wall-enclosed (full ceiling height) office of approximately 150 square feet. Article 36 provisions apply, except for the GS requirement.

Section 2

The Association shall be granted use of Agency-designated bulletin boards, physical space for meetings, and tools for virtual meetings, unless (1) such use is prohibited by applicable laws, rules, regulations or Office policies, and/or (2) such space or tools are not available. Notices posted by the Association on the bulletin boards designated

for their use shall be reasonable in size and shall be identified as posted by the Association.

Section 3

The Agency will provide "contractor or user passes" to Association staff (not employees of USPTO) for use Monday-Friday 5:30AM-11:59PM and Saturday 5:30AM-10PM only, in accordance with USPTO security regulations. During other hours, Association staff who are not employees of USPTO may only visit Alexandria headquarters while accompanied by a USPTO employee.

ARTICLE 11

DUES WITHHOLDING

Section 1: Eligibility

Any bargaining unit employee may have dues deducted through payroll deductions. Such deductions will be discontinued when the employee leaves the bargaining unit, ceases to be a member in good standing of the Association (as identified by the Association), or submits a timely revocation form under the procedures of this Article.

Section 2: Association Responsibilities

- A. The Association will inform management, in writing, of the following:
 - 1. Biweekly dues withholding amount(s) or changes in the dues withholding amount(s),
 - 2. The name(s) of the Association official(s) responsible for certifying each employee's authorization form, the amount of dues to be withheld, and
 - 3. The name and address of the payee to whom the remittance should be made.

- B. The Association will forward completed and certified dues withholding form(s) to the appropriate administrative office, as designated by the Agency,

Section 3: Management Responsibilities

It is the responsibility of the Agency to:

- A. Process voluntary allotments of dues in accordance with this Article and in amounts certified by the Association. The deduction will begin with the next pay period after the authorization form is received by the Employee Relations Division.
- B. Withhold employee dues on a biweekly basis;
- C. Transmit remittance to the official designated by the Association in accordance with this Article, as expeditiously as possible at the end of each pay period
- D. Process dues revocation forms in accordance with section 6 of this Article; and

- E. Notify the Association, on a biweekly basis, of individuals who are ineligible or become ineligible for having left the bargaining unit or having submitted a timely revocation form.

Section 4: Procedures for Withholding

Bargaining unit members wishing to have their dues withheld by payroll deduction will submit their completed and certified SF-1187s (or equivalent form) to the Agency's Human Resources Office, Labor Relations Division. If the employee already has the maximum number of allotments that can be processed, the employee will inform the Agency which allotment to cancel in order to process the allotment for dues withholding. In the event a question exists concerning whether an employee is in the unit of recognition and eligible for payroll deduction of association dues, the employee's dues will not be withheld until the issue is resolved.

Section 5: Changes in Dues Amount

When there is a change in dues structure, the Association will send a memorandum to the Agency's Human Resources Director, noting the amount of the change. The memorandum must be signed by one of the Association officials designated to certify dues withholding forms in section 2.A.2. Such changes shall be limited to once per year.

Section 6: Revocation

Employees may revoke their dues withholding once they have paid dues for a one-year period by submitting the appropriate form to the Chief of the Labor Relations Division.

ARTICLE 12

GRIEVANCE PROCEDURE

Section 1

For purposes of this Grievance Procedure the term grievance means any complaint:

- A. by an employee against the Agency concerning any matter relating to the employment of the employee;
- B. by the Association against the Office concerning any matter relating to the employment of any employee; or
- C. by an employee or the Association against the Agency concerning:
 - 1. the effect or interpretation, or a claim of breach, of this Agreement; or
 - 2. any claimed violation misinterpretation, or misapplication of any law or regulation affecting conditions of employment.
- D. by the Agency against the Association concerning any claimed breach of an obligation or responsibility owed to the Agency as a result of this Agreement.

Section 2

- A. The Agency and the Association recognize and endorse the importance of considering and resolving complaints and grievances promptly and, whenever possible, informally. The parties agree that this grievance procedure will provide a mutually acceptable means of resolving complaints and grievances at the lowest level possible, and the Agency and Association agree to work toward this end.
- B. The Agency and the Association shall afford and assure all employees freedom from restraint, interference, coercion, discrimination or reprisal for filing or presenting a grievance or for otherwise participating in the grievance procedure including arbitration.

Section 3

The procedure described in these sections shall constitute the sole and exclusive procedure available to bargaining unit members or the Association for resolving

grievances under this or any other negotiated agreement between the parties. Matters covered under this procedure and under certain statutory procedures may, at the discretion of the aggrieved employee, be raised under either procedure but not under both. An employee is not precluded from filing a grievance over an EEO matter solely because they have first consulted with an EEO counselor. Only if they have filed a formal EEO complaint through the agency's internal EEO complaint process are they precluded from filing a grievance over the same matter. The employee will be deemed to have exercised this option at such time as the employee timely initiates an action under the applicable statutory procedures or timely files a grievance in writing under this Article, whichever event occurs first. The matters for which this option exists are:

- A. discrimination based on race, color, religion, sex, national origin, age, physical or mental handicap, marital status or political affiliation under 5 USC 2302 (b)(1);
- B. removal or reduction in grade based on unacceptable performance under 5 USC 4303;
- C. other adverse actions under 5 USC 7121 (i.e., removal, suspension for more than 14 days, reduction in grade, reduction in pay and furlough of 30 days or less); and
- D. matters which may be raised as unfair labor practices under 5 USC 7116.

Section 4

The parties (i.e., grievant, Association, and Agency) have the following rights in all grievances under this agreement:

- A. To be present during any grievance discussion conducted pursuant to this Article, including any settlement discussions. The right of the Association to be present, however, may not impair the right of the grievant independently to handle the grievance.
- B. To be furnished with a complete copy of any documents presented or generated in the grievance. This copy shall be furnished by the person presenting or generating the paper at the same time that it is furnished to any other concerned official or party.
- C. The Association shall have the right to state its position on a grievance orally and in writing which is prosecuted by a grievant pro se.
- D. The rights specified in subsections A, B, and C shall not apply during informal discussions at the technology examining group or equivalent level unless the employee states that a grievance is being presented.
- E. The grievant shall have the right to self-representation at each level of the grievance procedure. However, the Association has a right to be present at every grievance

meeting or settlement discussion between the Agency and the employee.

- F. The Association may be chosen as the representative at any point in the grievance procedure. A grievant may only be represented by one Association representative. When necessary, another Association official (a trainee or a technical assistant) may attend the grievance meeting on bank time but, shall not participate in presenting the grievance. However, where two or more management representatives are going to hear a grievance, the grievant may be represented by the same number of Association representatives as there are management representatives including any representatives from the Office of Human Resources hearing the grievance.

Section 5

A consultation with the Office of the Ombudsman does not preclude the filing of a grievance and does not constitute any kind of election of forum. If a grievance has not been filed, the employee or Association must timely notify LR (not the supervisor) of the nature of the issue that may become a grievance. A pause will run from 90 days of the notification to LR as set out in section 6 of this Article.

Raising an issue with the Office of the Ombudsman at any point in the grievance process at or after the initial filing but prior to the issuance of the Agency's response to the grievant's exceptions filing will result in a 90-day pause in the grievance process. The Association representative or the employee may notify the LR Division Chief or the LR supervisor that the issue has been brought to the attention of the Office of the Ombudsman. The notification will lead to an automatic 90 day pause in the grievance process. If an employee initiates a pause, LR will notify POPA. Time clocks will resume the day after either:

- The 90 day pause expires,
- When the Association representative or the employee informs LR Division Chief or LR supervisor that the contact with the Office of the Ombudsman has not successfully resolved the issue, or
- At POPA's request when POPA is the representative.

Section 6

The following matters are excluded from coverage under the provisions of this procedure:

- A. Those matters excluded from coverage under 5 USC 7121 (c) relating to:
1. any claimed violation of prohibited political activities;

2. retirement, life insurance, or health insurance;
 3. suspension or removal in the interest of national security;
 4. any examination, certification, or appointment; or
 5. the classification of any position that does not result in the reduction in grade or pay of an employee.
- B. Nonselection for promotion or career development detail from a group of properly ranked and certified candidates.
- C. Nonadoption of a suggestion, except when the grievance alleges that an employee's suggestion was adopted without appropriate recognition of the employee who made the suggestion.
- D. A preliminary oral warning or a written proposed notice of an action which, if effected, would be covered by this procedure or any statutory appeal procedure, provided that the written proposed notice of action is considered, after the employee is given an opportunity to reply to the proposed action, and a written decision issued at the earliest practical date, after the employee has made a reply or after the date for making a reply has passed.
- E. Actions to terminate trial or probationary employees serving probationary periods, or employees holding temporary appointments with definite time limits.
- F. Matters excluded by 5 USC 5366.

Section 7 - Informal Procedure

- A. Within 20 calendar days after receipt of an unfavorable administrative decision, or the date of the event or action prompting the grievance or the date the grievant becomes aware or should have become aware of such action, the grievant, or their representative must personally present the grievance to the grievant's immediate supervisor. In the event of Agency or Association grievances, the grievant representative must personally present the grievance to the lowest official with authority to adjust the grievance or to effectively recommend its adjustment. At this time, the official receiving the grievance shall issue a brief written memorandum to the grievant stating merely that an informal grievance has been filed, identifying the date and party(ies) and then provide a copy to the Association, as appropriate.
- B. If the person receiving the grievance in subsection A does not have the authority to resolve the matter, they shall promptly refer the grievance to the official who does have such authority and notify the grievant and/or the Association, as appropriate, in writing of this referral. Any time limit on the informal response occasioned by this referral may be tolled, for a reasonable period, but not to exceed two (2) workdays.

- C. The 20 calendar day time period to file an informal grievance shall not bar an Agency or Association grievance based on an alleged "continuing violation" (as that term has been construed by the courts in labor relations matters) or an alleged pattern of conduct provided that the grievance is filed within 20 calendar days after the date when awareness of the alleged pattern occurred.

- D. The official receiving the informal grievance shall inform the grievant, and/or the Association, as appropriate, of their decision within 20 calendar days after receipt of the grievance. If the decision does not resolve the grievance, the official shall immediately issue a written memorandum to the grievant stating that the parties were unable to resolve the matter informally. Copies of the memorandum shall be provided to the Association, as appropriate.

Section 8

- A. If the grievance is not resolved informally, the grievant may file a formal written grievance within 10 calendar days of receipt of the informal grievance decision.

- B. The formal grievance shall contain the following information:
 - 1. Identification of the grievant;
 - 2. Nature of the grievance;
 - 3. Corrective actions requested and reasons;
 - 4. The fact that the Association has been designated as representative, if the grievant has so designated.

Section 9 - Formal Procedure

- A. A copy of the written grievance shall be furnished to the next higher management official with authority to resolve the matter causing dissatisfaction or the Association President and Vice President in case of Agency grievance. The official shall answer the merits of the grievance, provide any pertinent information relevant to the grievance, and present any allegations of procedural deficiencies within ten (10) calendar days of filing the formal grievance. The official's answer shall clearly indicate the reason(s) the position and shall address the points raised by the grievant in the formal grievance. The grievant may file exceptions within ten (10) calendar days of receipt of the official's answer. The grievant's exceptions (if any) shall become a part of the grievance file.

- B. The Undersecretary of Commerce for Intellectual Property and Director of the USPTO or Association President, as applicable, shall appoint themselves or another official as the deciding official within two (2) workdays after receipt of grievant's exceptions. In

any grievance against the Agency, all papers submitted under this section shall be filed with the Undersecretary of Commerce for Intellectual Property and Director of the USPTO. In any grievance against the Association, all papers under this section shall be filed with the Association President and Vice President.

- C. Either party may request that a meeting be held to discuss the matter. If such a request is granted, the meeting shall take place within ten (10) calendar days after receipt of the grievant's exceptions. The meeting shall not be considered a hearing and the examination or cross examination or other presentation of witnesses by either party shall not be permitted.
- D. The deciding official may attempt to settle the grievance. However, if settlement is not possible, the deciding official shall render a written decision within fifteen (15) calendar days of his appointment or the close of the meeting.
- E. The deciding official's written grievance decision may be appealed to binding arbitration by the Association or Agency, as appropriate.

Section 10

- A. The grievant shall be granted a reasonable amount of official time, up to 8 hours for informal grievance and up to 8 hours for formal grievance preparation (total 16 hours).
- B. The grievant, the Association representative and all relevant employee witnesses shall be on official time for the presentation of any grievance matter.

ARTICLE 13
ARBITRATION

Section 1

- A. Arbitration may be invoked only by the Association or by the Agency. An employee does not have the right to invoke arbitration. If the Association desires to invoke the binding arbitration provisions of this section, it must notify the Chief of the Employee and Labor Relations Division within ten (10) calendar days of its receipt of the deciding official's written grievance decision. Likewise, the Agency must notify the Association President of its desire to invoke arbitration within ten (10) calendar days of its receipt of the Association President's written grievance decision.

- B. Within fourteen (14) calendar days of invoking arbitration, the invoking party shall request the Federal Mediation and Conciliation Service provide the parties with a list of seven (7) impartial arbitrators from the metropolitan area surrounding the USPTO Office in which the case arose who are members of the National Academy of Arbitrators. The invoking party shall pay the fee for this request. Within fourteen (14) calendar days after receipt of the list, the Office and the Association shall meet to select an arbitrator from the list. The Office and the Association will each strike one arbitrator's name from the list and repeat the procedure until one name remains on the list. The remaining person shall be the duly selected arbitrator. The party to make the first strike shall be determined by the toss of a coin.

- C. Where an arbitrator has not been selected within twenty (20) calendar days after the date of receipt of the FMCS list of arbitrators, due to either party refusing to participate in the selection of an arbitrator, the procedures of the American Arbitration Association (AAA) may be invoked by either party. Once these procedures are properly invoked, the AAA shall have jurisdiction over the arbitration. However, the AAA procedures must be invoked within ninety (90) calendar days after the date of the receipt of the FMCS list of arbitrators. The parties shall not maintain their arbitration rights if the procedures are not invoked within the ninety (90) day period.

- D. Within three working days after the selection of the arbitrator, the parties shall notify, in writing, the source supplying the list of arbitrators of the arbitrator selected and the requirements of this Article.

- E. The arbitrator shall conduct the arbitration in accordance with the following procedures:
1. The arbitration hearing shall not be open to the public or the press. In such hearings presented in the name of an individual or groups of individuals, attendance shall be limited to persons determined by the arbitrator to have a direct connection with the grievance. Parties to the grievance may be represented by an equal number of counsel, but not less than two.
 2. All witnesses except the grievant or counsel as the first witness shall, be sequestered.
- F. The arbitrator shall be requested to render a decision to the Office and the Association as quickly as possible, but no later than 30 days after the conclusion of the hearing or the arbitrator's receipt of post-hearing briefs, if they are submitted.
- G. The arbitration proceedings shall be held on premises provided by the Agency.
- H. Normally, there shall be a verbatim transcript of the hearing. A copy of the transcript shall be provided to each party promptly after the hearing is closed.
- I. The salary for a PTO employee, while participating in the presentation of testimony, shall be borne by the Agency, if that employee would otherwise be in a duty status.

Section 2

- A. The grievant shall be granted a reasonable amount of official time, up to eight 8 hours, for preparation for arbitration.

B. The grievant, the Association representative, and all relevant employee witnesses shall be on official time for the presentation of any grievance matter or at any arbitration hearing.

ARTICLE 14
MID-TERM BARGAINING

Section 1: General

This article applies to bargaining during the term of the Agreement, including any rollover term. All of these rules apply unless the parties expressly agree in writing to the contrary.

Section 2: Bargaining

- A. The agency agrees that it will bargain over matters covered by section 7106(b)(1) in accordance with Executive Order 14003 unless and until the directive to bargain over such matters contained in that Executive Order is rescinded or revoked.
- B. The agency will engage in midterm bargaining over any matters within the scope of bargaining under the Statute unless they are specifically provided for in this Agreement.

Section 3: Rules Applicable to All Bargaining

- A. Mid-term changes in conditions of employment shall be proposed on a quarterly basis (i.e., the 10th day of January, April, July, or October), beginning at least three full months after the implementation of this Agreement.
- B. Unless the parties agree otherwise, the following procedure shall be used for preparing mid-term bargaining proposals:
 - 1. The party proposing a change in working conditions or personnel policies shall present its proposed action to the other party in writing and shall include the reasons for the action and copies of relevant statutes, regulations and other relevant supporting background materials. Failure to present a counterproposal shall not be construed as agreement to the proposal.
 - 2. Within two weeks thereafter, the parties shall meet to explain and clarify the proposals and answer questions regarding the proposals.
 - 3. For Agency initiated changes, the Association will be granted the opportunity to meet with the affected employees to discuss the proposed action within two weeks after the completion of clarification. The Agency shall provide adequate space and/or video conference technology for all such meetings.

Participants shall be granted one hour of non-bank_official time to attend such meetings.

4. Within two weeks after the meeting with affected employees, the party not initiating the procedure shall present its counterproposals. Bargaining shall begin as soon as practical (normally within one week after the counterproposals are presented).
 5. For comprehensive negotiations involving performance appraisals, signatory authority or automation, the time limits in this section shall be extended as follows: one additional week to schedule clarification, one additional week to schedule meetings with affected employees, and ~~or~~ one additional hour of official time for each affected employee to attend such meetings.
 6. Association representatives shall be on non-bank official time for preparation under this section.
 7. Either party may request an extension of these deadlines. Requests for extensions will not be unreasonably denied.
- C. Electronic Exchange of Documents: Notification and any other document required in these rules will be electronic. All proposals prepared during a negotiation session will be shared electronically by the end of the next business day following the session in which they are presented. A party not receiving an electronic version of the proposals shall request the document and the other party has one business day to respond. Documents shared electronically will be of the file type associated with the document preparation software officially used by the Agency.
- D. Document Delivery: All documents provided to the Agency from the Association will be addressed and delivered electronically to the Chief of the Labor Relations Division or their designee. Agency documents shall be sent to the Association President or their designee electronically. Once chief negotiators have been appointed, documents will be exchanged through chief negotiators.
- E. Tentative Nature of Agreement to a Proposal: Agreements on any proposals are conditional until agreement is reached on all issues.

Section 4: Conduct of Bargaining

- A. The Association shall have the right to the same number of representatives at mid-term bargaining as the, but not less than two representatives. Either party may, however, bring an observer who may not participate in the session, but may take notes.
- B. For comprehensive negotiations involving performance appraisals, signatory authority or automation, each party shall be allowed to bring at least four representatives. The parties may mutually agree to allow larger numbers of representatives, but the Association shall be allowed to bring at least as many representatives as the Agency is allowed to bring.
- C. Chief Negotiators: The parties agree to have at least one person authorized to speak for their party at every bargaining session. This authority includes the ability to sign off on proposals on which conditional agreement has been reached.
- D. Timing of Negotiations: Bargaining will be conducted three days a week from 9:30 a.m. to 4:00 p.m. ET, including a 1-hour lunch break.

Section 5: Mediation, Negotiability and Impasse

- A. If the agency declares impasse, it will provide the Association with a reasonable amount of time, not less than 14 days, to request the services of the Federal Mediation and Conciliation Service (FMCS) to resolve the impasse. If the mediator subsequently determines that the parties are at impasse and releases the parties from mediation, the parties shall jointly request the assistance of the Federal Service Impasses Panel to resolve the impasse.
- B. Official Time: Association representatives may use official time as covered in Article 9 of this Agreement.
- C. Negotiability Disputes: The parties will attempt to resolve negotiability disputes informally during bargaining sessions. The Association may appeal a declaration of non-negotiability to the Federal Labor Relations Authority (FLRA). Negotiations over other unrelated issues shall continue. Negotiations on articles containing at least one proposal subject to a negotiability appeal shall not be considered as having been concluded until a decision is rendered by the FLRA on the negotiability appeal and any subsequent negotiations of the language that was the subject of the appeal, or alternative language, are complete. Once the

FLRA issues a decision, negotiations will continue and agreed upon or imposed provisions will be included with other provisions prior to Association ratification of the agreement.

Section 6

Agency Head Review: In the event that the head of the Agency disapproves an agreement, no portion of the agreement will be implemented if the parties resume negotiations within two weeks of the Agency disapproval or until any negotiability appeal is resolved by the FLRA, unless otherwise agreed. If neither party requests bargaining over the agreement within two weeks of the disapproval and there is no negotiability appeal pending before the FLRA, the provisions of the contract that were not disapproved will be implemented by the parties.

Section 7: Pre-decisional Involvement

Predecisional involvement by the Association in matters that are traditionally considered an exercise of management rights that are subject only to impact and implementation negotiation may obviate the necessity of formal impact bargaining before implementation. Accordingly, whenever management contemplates changing conditions of employment through the exercise of management rights, it will first engage the Association in predecisional discussions before making a final determination of whether and how to make the contemplated change and will consider the Association's input and concerns. The agency will then formally inform the Association of the anticipated change in conditions of employment and the Association will have the opportunity to bargain over the impact and implementation of the change following the provisions of this article if it is not satisfied with the manner in which the agency has decided to implement the change, or with the measures the agency plans to take to mitigate the impact of the change.

Section 8

- A. The Agency may not implement changes until the above procedures have been exhausted, except when immediate implementation is necessary for the functioning of the Agency.
- B. When the Agency is required to implement pursuant to A, it shall give written notification, including justification, to the Association as early as possible. Any negotiated agreements concerning such action shall be given retroactive effect.

ARTICLE 15

PILOT PROGRAMS

Section 1

Pilot programs shall follow the usual bargaining process. The Association will not be required to give up any bargaining rights for a pilot program that the Agency desires to put into place.

Section 2

All pilot programs will have an end date after which the results, including any data acquired, will be shared with the Association. Either party may then request discussions or negotiation to discuss a further pilot or making the pilot program permanent as supported by the data.

ARTICLE 16
TECHNOLOGY

Section 1: Changes to IT

When the Agency determines to change information technology (IT) hardware, software, and/or services that are used by or affect/impact bargaining unit members, the Agency will notify the Association and engage in the processes of this section. Impacts can include, but are not limited to, changes in existing bargaining unit member work processes, learning new work processes, an increase in the amount of time required to perform work functions, significant rearrangement of the work environment, or the like.

- A. Within 2 weeks of the notification, the Association may request a meeting, or meetings, with the Agency. These meetings will provide the Association an opportunity to learn about the change and provide feedback to the Agency.
- B. Once the feedback is provided, the parties will discuss the full production use deployment of the change, including the dissemination of data required for discussion. Failure to reach agreement will not impede the Agency from deploying/implementing the software change, rather the parties will continue discussions post-implementation.
- C. Considering the feedback and discussion, the Agency will ensure necessary training, practice, and/or adjustment time. The Agency will develop training materials, or other documents related to the change, with the Association prior to distributing it to bargaining unit employees.

Section 2: IT deployment timing

- A. Where possible, particularly for IT deployments that may involve outage or interruption to bargaining unit member processes, deployment will occur during posted IT maintenance hours. Where it is not possible, bargaining unit members will receive appropriate other time and docket management adjustments.
- B. For IT deployment requests originating from individual users, the Agency may deploy changes at any time coordinated with the user, including during business hours, in order to fulfill and accommodate the individual need.

Section 3: Return and exchange of equipment

- A. Bargaining unit members who are full time or partial teleworkers will receive their end user hardware via mail, at a user specified address, unless otherwise specified in their business unit Telework Agreement.
- B. As part of an agency wide replacement of their UL (or successors), bargaining unit members may claim up to 4 hours of other time for preparation and adjustment unless otherwise negotiated.
- C. Bargaining unit members will return all Agency equipment replaced in an end user deployment to the Agency within five days using commercial shipment means designated by the Agency or at an in-person drop-off site designated by the Agency, unless permission is granted by their immediate supervisor, their immediate supervisor's designee, or their telework coordinator for a longer return time frame. Bargaining unit members will receive appropriate other time to perform the return.

Section 4: Data

- A. Bargaining unit members shall have access to a time tracking tool that can report up-to-the minute login, logout, badge in, and badge out activity so that time may be both accurately worked and claimed.
- B. Bargaining unit members shall have access to a bandwidth tracking tool that can report their monthly bandwidth usage.
- C. The Agency shall not use data derived from user tracking and monitoring for the purpose of time tracking for disciplinary action, outside of login, logout, badge in, and badge out activity.

Section 5: Emergency Repairs

As per Article 4, section 1E the Agency shall retain the right "To take whatever actions may be necessary to carry out the mission during emergencies". This may include the unavailability of hardware, software, or services with no prior notice. Bargaining unit employees will receive appropriate other time and docket management adjustments for any interruptions to work.

Section 6: Employee distractions from IT

The Agency and Association recognize that work hours not otherwise accounted for are for the production of work.

- Bargaining unit members may close their email client (i.e. Outlook or its successor), and its notifications, during times where work demands concentration and limited interruption.
- Bargaining unit members may utilize the “do not disturb” features on MS Teams (or its successor(s)) during times where work demands concentration and limited interruption.
- The bargaining unit member must remain accessible to their supervisor, or supervisor’s designee, e.g., through MS Teams “priority access” or phone calls.
- Non-emergency IT, Agency-originating, Agency-sponsored (e.g. the Combined Federal Campaign), and Department of Commerce emails intended for bargaining unit members will be delivered during maintenance windows (e.g. by delayed delivery in Outlook). Such emails that are not intended for bargaining unit members will not be delivered.
- The Agency will deploy effective tools to limit external, commercial emails, faxes, and phone calls, including bargaining unit member level filters where available.

ARTICLE 16.1

AUTOMATION

Section 1

The Agency shall promptly furnish to the Association detailed advance information about the development and implementation of automated operations through the application of computer technology. The providing of information shall include preliminary (or tentative) and revised documentation and periodic briefings.

Automation Briefings

- A. In order to gain user input on planned development of automated tools and selection of new hardware for desktop workstations/laptops and assist predecisional involvement with the Association on these issues, the Agency will hold an annual Automation Briefing, which will be held in the first quarter of each fiscal year. This meeting will provide an overview of projects currently underway and projects to be undertaken over the next year. Particular emphasis will be placed on current projects related to a development or implementation phase, on projects being initiated in the near term (e.g. one year or less), and projects which must be budgeted for in the upcoming budgeting cycles.
- B. The Automation Briefing will include representatives from OITP (or its successor) and Patents Management. The Association's Executive Committee will be invited to attend.
- C. The Association will be notified approximately one month in advance of the date and time of the Automation Briefing. The Association may provide to the Agency a list of topics of concern related to automation at least 2 weeks before the meeting to assist in formulating a comprehensive agenda. An agenda with related informational attachments will be provided to all participants at least 5 business days prior to the meeting. The Agency will present the best information available to management at the time of the meeting for the projects on the meeting's agenda, and its best estimate of their long range automation plans. The information presented at the meeting will encompass all automation projects that impact bargaining unit members. This information will include but is not limited to topics such as anticipated resources for the projects, anticipated and/or potential problems that may have to be overcome during the projects, and estimated time frames for the projects. To the extent possible, the Agency will include specific information on

plans for gathering user input on projects (e.g. planned focus groups, beta tests, etc.), and on the training plans required by new automated tools. The Agency will explain the various projects, and the rationale behind them. To aid in establishing priorities, the Association will provide input on the importance of various projects to users within the overall automation context presented by management. The Association may also identify additional projects that they feel would aid in supporting users' work processes.

- D. A quarterly meeting will be held for each automation project. The attendees at the quarterly meeting will depend on the topics to be covered, but may include all those who participated in the annual meeting. Potential topics for discussion at meetings include changes to the plans discussed at the annual meeting, further feedback on the Association's comments on the annual meeting, more in-depth discussions of specific automation project plans, or other topics or recommendations raised by the Agency or the Association.
- E. The Association will be notified approximately one week in advance of the date and time of the quarterly Automation Briefings. The Association may provide to the Agency a list of topics of concern related to automation before the meeting to assist in formulating a comprehensive agenda. An agenda with related informational attachments will be provided by management to all participants at least 5 business days prior to the meeting.
- F. Time spent by participants in all Automation Briefings, in preparation for those meetings, and in responding to those meetings, will be treated as joint committee time.
- G. The Agency shall provide the Association with the results of system valuations performed by the Agency to determine whether functional requirements are being met.

Tools Development/Hardware Selection Projects

- A. For each project identified at an Automation Briefing, the Association will appoint an appropriate number of Association representative(s) who will be advisors to the project development team. Generally, there will be two Association representatives assigned to any project. The Association representatives' primary roles are to ensure that user input is considered when decisions are made, to identify how a particular project will impact users, to provide input into the development or selection process on how to minimize negative impacts on users, and to attempt to resolve labor relations issues which arise due to the project.
- B. The Association representatives will be responsible for referring issues to the project

manager. Those issues that are not resolved through the development process will be referred to an impacts resolution mechanism as set forth below. The Association representatives may participate in the project.

- C. For each project identified at an Automation Briefing, the Agency will consider nominations from the Association of individuals to participate on each project team. To the extent possible, the Association will nominate bargaining unit members who are among those who will be impacted by a particular project, and who have particular knowledge or skills which would be valuable to the project.
- D. In many projects, work will be less than full-time. In both full-time and Part-time instances, time spent by the Association-nominated team members on the project team will be considered as examining related time for the purpose of award calculations.

Additional User Input

- A. In addition to the opportunities listed above, users will continue to be asked for input via a variety of evaluation vehicles such as focus sessions, surveys, round-table discussions, and beta-tests. The Association will be invited to participate in the development of focus sessions, surveys, and roundtable discussion, and will be permitted to participate in these activities. Time spent in these activities by employees will be considered as examining related time for the purpose of award calculations. With respect to beta-tests, each beta-tester will be provided with guidelines for participation prior to providing any input. These guidelines would include, at a minimum, the specific goals, expectations, and objectives of the beta-test, details for providing feedback, training as appropriate and the mechanism to report system bugs and problems. The training may include training on the tool being tested, and beta testing procedures.
- B. The time code(s) for collection of the input will be provided.

Impacts Resolution Mechanism

While it is the intent of the parties that the user representatives will identify and mitigate many of the impact and implementation concerns throughout the project life-cycle, it is recognized that some issues will remain unresolved. Accordingly, an Impacts Resolution Committee (IRC) will be established to resolve outstanding issues related to a particular project. Each IRC will be limited to three members of the Association and three members from Patents Management. The goal of each IRC is to attempt to avoid or minimize all remaining impact and implementation issues. Any issues that cannot be

resolved through an IRC two months prior to planned implementation will be subject to traditional impact and implementation bargaining.

Section 2

Automation Down Time and Arrangements

- A. In the event that an employee experiences an outage of their computer, experiences an outage of individual automated tools (e.g. PE2E DAV, SEARCH, etc.), or experiences a full-scale USPTO system outage, the employee should work on other activities not affected by the outage. If no other work is available, the employee should make a request to their supervisor to assign duties that do not require using tools affected by the outage. If the supervisor or designee is not available, the examiner should leave a voicemail or e-mail message to the supervisor or designee stating the issue(s) that they are experiencing. These guidelines and procedures apply to all bargaining unit members, regardless of duty station.
- B. In order to be granted non-production time for computer problems or outages, an employee must consult with a supervisor prior to claiming non-production time via their timesheet, where practicable. Requests for down-time in these situations should occur as early as possible in the pay period so that the employee's timesheet can be validated and certified in a timely manner. All reasonable non-production time requests by production employees shall be granted by the supervisor. If the employee feels that reasonable non-production time has not been granted by the supervisor, the employee may appeal to their Division Director/ Technology Center Director.
- C. The Office will provide prior notification to employees at least 72 hours in advance of all specially scheduled shutdowns of automated systems whenever possible. The Office will provide to employees in advance a schedule of all regularly scheduled shutdowns.
- D. No automation system down time will be scheduled during normal system production hours (current hours are M-Th 5:30am-11:59pm, F 5:30am-10pm, Sat, Sun & Holidays 9am-10pm ET). No routine automation system maintenance or down-time shall be performed during the last two biweeks of any fiscal year and last biweek of any quarter.
- E. Except for emergency situations, no changes to the automation systems will be made during the last two biweeks of any fiscal year and the last biweek of any quarter.
- F. The Agency shall provide, where practicable and in as expedient a manner as

possible, notice of issues with automation systems during operating hours. The Agency shall additionally provide notice of resolution of any automation issues to employees.

- G. The following procedure applies to all Agency outage scenarios, individual or a full-scale system outage. The employee should follow the steps below to claim non-production time:
1. Contact the OCIO Service Desk - Employees experiencing computer related issues (IT issues), should follow the steps of contacting the Service Desk, via phone at 2-9000, e-mail to servicedesk@uspto.gov or SharePoint S/9000 form (or their successors), report the problem and obtain a ticket number. If the employee is unable to obtain a ticket number proceed to step 2.
 2. Consult the supervisor or designee of the automation issue in a timely manner of current steps taken to work around the outage, if practicable. Supervisors can provide information to employees on available alternative work that can be performed. If the supervisor or designee is not available, the employee should leave a voicemail or e-mail message to the supervisor stating the automation issue that they are experiencing and current steps being taken to work around the issue, in a timely manner.
 3. When a full-scale Agency outage occurs, employees should follow guidance provided by management when available and applicable. Employees should notify their supervisor of the issue(s) as soon as possible by any practicable means.
 4. Communicate to the supervisor the duration of the automation issue and work with supervisor to determine appropriate downtime to be granted. The supervisor will work in a timely manner to grant and notify the employee of down-time granted as appropriate.
 5. Record in Remarks section of the timesheet the outage experienced along with the ticket number provided by the Service Desk if available (e.g. INC000001536827 - Hard Drive Crash – 2 hours).
 6. Bargaining unit members shall receive time for the following activities and will be encouraged to accurately record automation down-time, on their timesheets, in separate and distinct time category(ies) after an outage has been resolved:
 - a. Recreating work lost due to failure of either the USPTO network, the employee's desk top workstation, or commercial database access.

- b. Attempting to correct computer problems, in excess of an initial brief telephone call to the help desk. This time includes, but is not limited to communication with the USPTO help desk and computer specialists (e.g. when help desk personnel remotely controls the employee's workstation).
- c. Waiting due to degraded performance or other work slow-downs of the automated systems that disrupt normal work flow.
- d. Waiting due to an inability to perform work due to failure of the network, employee's desktop workstation, or commercial databases, including when the employee's workstation loses search capability but still functions as a word processor, once the employee runs out of reasonable alternative work that can be readily performed. Such time may be accumulated so as to provide an accounting in whole hour increments.

Types of Outages	Examples	Web TA PPA Code
Time to recreate lost work (Catastrophic Failure)	Recreating office actions, searches, etc. due to computer system failures – NOT FOR USE DURING OUTAGES.	PNCSPA-0000-090180
Computer System Outage	Failure of USPTO provided equipment, computer system, or USPTO computer application.	ANTIME-0000-A00131
Power Outage	Power is interrupted or fails Campus-wide, building- wide, or building floor.	ANTIME-0000-A00131

- 7. No employee will be charged with docket management days for any clocked application or penalized when work cannot be timely completed due directly to the failure of the Agency's network, group patent printers, commercial database access and/or the employee's desktop work station.

Section 3

Employees working with computers shall have a work environment that is based upon high standards of health, safety and ergonomics. Ergonomic furniture including a lockable file cabinet or desk shall be provided. Upon request, ergonomic keyboards and mice shall be provided to the bargaining unit member.

ARTICLE 17

COMPETITIVE STAFFING

Section 1

All career vacancies shall be filled from among the best qualified candidates available on the basis of merit, fitness and qualifications; and without regard to race, color, religion, national origin, age, marital status, sex, physical or mental disability, sexual orientation, gender identity and/or expression (including nonbinary), genetic information, political or employee organization affiliation, or pregnancy/lactation, except as may be authorized or required by law (see for example Schedule A). Personnel actions shall not be based on criteria that are not job related, including nepotism or close personal relationships.

Section 2

The Agency shall confer, at least annually, with the Association regarding the general professional staffing goals and hiring plans. Subsequent anticipated staffing goal and hiring plan adjustments will be addressed in a labor-management committee meeting.

Section 3

- A. Extra credit (additional credit) ratings provide additional points applied toward a candidate's rating which is used to rank the candidate against other candidates. The Agency shall consider candidates for extra credit ratings at least twice a year. Candidates will be nominated by appropriate supervisors or an individual may nominate himself. No cognizance will be taken of the type of nomination. Each candidate not awarded the requested rating shall be given the reasons for the denial in writing.
- B. Prior to any change in existing criteria for extra credit items, or in any changes in the procedures for the submission and consideration of candidates, the matter will be addressed in a labor-management committee meeting. The requirements for the granting of extra credit items will be in accordance with those set forth in the Position Classification Standards for Patent Examining Series, GS-1224, as interpreted by the Department of Commerce. The parties recognize the benefits of maintaining a consistent scope of the art for examiners. Therefore, to the extent consistent with the interests of the Agency, every reasonable effort will be made to allow examiners in GS Grade 13 and above to maintain their assigned dockets.

Section 4

Requests for personnel action will be processed promptly by the appropriate party (i.e., supervisor or OHR).

Section 5

No member of the Unit shall be placed in a disadvantageous position with regard to promotions by virtue, of officially initiated service on special detail or assignment. If such detail or assignment should preclude or otherwise render impracticable an accurate work performance evaluation for promotion purposes, said member shall be considered as working at this same level of work performance evidenced immediately preceding their entrance on such detail or assignment.

Section 6

- A. In compliance with regulatory requirements, the Office Agency shall grant temporary promotions to members of the bargaining unit who have served in a higher-grade position for more than 45 days.
- B. A temporary promotion of 120 days or more: All prior service at the higher-grade level during the preceding 12 months including details to higher graded positions or temporary promotions must be counted as part of the 120 days. A temporary promotion may only be made permanent without further competition if the fact that it might lead to a permanent promotion was originally made known to all potential applicants and the temporary promotion resulted from a competitive process.

Section 7

The Agency agrees that the promotion of an employee shall not be delayed only because the employee's supervisor has been newly appointed to that position and is unfamiliar with the employee's work.

Section 8

Programs which are established to provide for orderly career or promotional advancement shall be announced by the Office (see section 10.A.). Criteria for evaluation of participants in such programs will be published, including electronically, by the Agency and copies thereof will be made available to individual members of the Unit upon request. Criteria contained in existing programs, identified by the Association, will also be published and made available, including electronically. The Association shall be furnished a copy of any such criteria.

Section 9

This Section provides a fair and equitable procedure for filling positions through competitive procedures based on merit principles. To that end, the following procedures shall be used to identify and select the best qualified candidates for career vacancies,, which are not within an employee's established career ladder, whether by promotion, transfer or new appointment.

A. Position Vacancy Announcements shall be promptly posted electronically on usajobs or equivalent. An announcement directing employees to usajobs will be posted on all Agency bulletin boards. The announcement will be posted for at least 2 weeks. A copy of each Announcement shall be provided to the Association. The Announcement shall contain:

1. Announcement number;
2. Opening and closing dates or "Open continuing vacancy announcements, i.e., vacancy announcements without specific closing dates, may be used to advertise recurring vacancies for which recruitment is expected to be difficult or continuing.;
3. Position title, series, grade;
4. Organizational location and duty station;
5. Full promotion potential and/or career ladder status where appropriate;
6. Principal duties, including the amount of travel;
7. Minimum qualifications required;
8. Selective placement factors, if any;
9. Evaluation methods to be used;
10. Statement of equal employment opportunity;
11. Whether there is one or multiple positions to be filled from the announcement;
12. Information on how to apply;
13. Telework plans available for the position;
14. The categories of evaluation criteria and the total points available in each category;
15. The crediting plan for each category; and
16. An identification of other similar vacancies that may occur in the ensuing 12 month period, if known.

When a sufficient number of candidates apply for consideration, a promotion register or skill file will be established. The register cannot be used for a period longer than six months. Candidates on the register will be considered for all applicable vacancies developing during the period.

B. Applicants must meet all qualification requirements by the closing date of the vacancy announcement or the conclusion of the selection process (step G below), to be eligible for consideration for that vacancy. Applicants must provide all information

requested on the vacancy announcement by the closing date. Information not included will not be considered.

Note: If a hardship exists preventing the employee from applying online (e.g., extended absence such as medical leave, military service, compensable job-related injury, etc.), the Agency may, on a case-by-case basis, consider other methods of applications. In such situations, the employee should contact OHR for guidance and assistance with regards to the submission of an application. The Employee must contact OHR in advance of the closing date of the announcement and the application must be received by the closing date of the announcement.

- C. Following the announcement of a vacancy, the Agency shall appoint an evaluation panel to evaluate and rank the candidates for the vacancy. The panel will consist of persons who are at least one grade higher than the highest grade assignable to the vacancy and, where possible, shall include no more than one person under the jurisdiction of the second line supervisor.
- D. All eligible candidates will be evaluated and ranked in a fair and objective fashion. At least 60 percent of the candidates' evaluation score shall be based upon objective criteria, such as, objective examinations, blind evaluation of written work, experience and relevant training, and sanitized performance evaluations.

The criteria for rating must:

1. Be related to the job to be filled;
 2. Provide adequate measure of the qualifications needed for the job to be filled;
 3. Make meaningful distinctions among the applicants, i.e., indicate those who are the best qualified from the group of applicants; and
 4. Distinguish between the knowledge, skills, abilities, and competencies an employee must possess at the time of promotion and those that can be quickly and easily acquired after promotion through experience or training.
- E. A crediting plan, how points will be awarded for work experience, performance evaluations, etc., shall be established and reduced to writing before the vacancy announcement is posted.
 - F. Within 30 days after the vacancy announcement has closed, the panel shall evaluate and rank the candidates as "Qualified," "Well Qualified," or "Best Qualified." The panel shall maintain a record of what points are credited to each candidate by

category and the factual basis for crediting those points. The records of each panel shall be available to the Association and to each candidate upon the filing of a grievance or other appropriate challenge to the promotion. These records shall be retained for two years or until any grievance or challenge regarding the selection is finally resolved, whichever is longer.

- G. When all eligible candidates have been evaluated and ranked, the Agency will promptly issue form CD-262, "Merit Assignment Program Certificate," listing the names of the best qualified candidates in alphabetical order, to be considered by the selecting official.
1. A certificate will usually include the names of three to five best qualified candidates for the vacancy to be filled. Additional candidates may be certified where meaningful distinctions cannot be made. Ten is the maximum number of best qualified candidates that may be referred to the selecting official, except as stated in subsection G.3, but the number of candidates may be increased to the extent necessary to include all of the candidates available from other appropriate sources as "other appropriate sources" is used in 5 U.S.C. § 7106 (a)(2)(C) (ii).
 2. In cases where meaningful distinctions of qualifications cannot be made through the application of quality ranking factors and an excessive number of candidates are considered equally qualified, up to 10 candidates may be listed on a certificate based on seniority within USPTO.
 3. When there is more than one vacancy to be filled from a certificate, one additional candidate may be added to the certificate for each additional vacancy. In the event an additional vacancy occurs within one month after an announcement has closed, the old announcement may be used to fill the vacant position, with the consent of the Association.
 4. A Merit Assignment Program Certificate is valid for 30 calendar days from the date of issuance. The certificate may be extended for 30 additional days upon a valid request by the selecting official, with the consent of the Association.
 5. Interviews with the selecting official are optional. If one member of the "best qualified" group is interviewed, all must be interviewed.
 6. If the candidate selected is a Unit employee, he/she shall be promoted within one pay period of the date of his/her selection. Under unusual circumstances (e.g. to permit completion of essential assignments or to permit arrangements to be made for the completion of essential assignments), this time period for promotions may be extended, but for no more than two additional pay periods.

7. OHR will arrange for the release of the selected applicant from the current Federal employing organization, as applicable. Employees will be released from the losing organization/business unit within one full pay period of receipt of the request for promotion release. Under unusual circumstances (e.g. to permit completion of essential assignments or for other acceptable reasons) the release date may be extended. If mutual agreement for release cannot be reached, OHR may negotiate the release date.

H. The Agency shall notify all candidates as to whether they were selected or not.

I. The selecting official will personally discuss with candidates any questions they may have about their non-selection.

J. When requested by a competing applicant, the Agency shall furnish the following information after the action has been completed:

- The name of the individual(s) selected;
- Whether the applicant was found to be qualified;
- Whether the applicant was on the list from which selection to fill the position was made; and
- Any other relevant information the applicant may require to prosecute a grievance or other challenge.
- In what area, if any, an employee may improve his or her qualifications to enhance chances for future selection. (This information normally will be furnished by means of a counseling discussion with either a representative of the office of Personnel or a knowledgeable supervisor with feedback from the panel.)

Section 10: Corrective Action and Priority Consideration

A. When there is a failure to adhere strictly to the provisions of 5 C.F.R. or this Agreement, corrective measures shall be applied in accordance with guidance set forth in 5 C.F.R., Part 550.

B. If, as a result of a grievance being filed under this Agreement, either OHR agrees or an arbitrator decides that an employee was improperly excluded from the certificate of eligible applicants list(s), he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified.

1. An equivalent or identical vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee received improper consideration.

2. Priority consideration means that the selecting official must give the employee alone bona fide consideration before any other applicant is referred for the position to be filled. The employee is not to be considered in competition with other applicants and is not to be compared with other applicants.
- C. If multiple applicants deserve priority consideration based on improper exclusions within the same promotion action, all deserving applicants shall be referred simultaneously for the next comparable promotion opportunity.
- D. In the event that improper exclusions are made in separate promotion actions, all applicants deserving priority consideration from the first action will be referred before the applicants deserving priority consideration from subsequent promotion actions.

Section 11: Retroactive Pay

An employee will be entitled to retroactive pay in connection with an improper personnel action in accordance with applicable law, rules, regulations and/or this Agreement.

ARTICLE 18

NON-COMPETITIVE PROMOTIONS

Section 1

The Agency shall confer, at least annually, with the Association regarding the general professional staffing goals and hiring plans. Subsequent anticipated staffing goal and hiring plan adjustments will be addressed in a labor-management committee meeting.

Section 2

The parties recognize the benefits of maintaining a consistent scope of the art for examiners. Therefore, to the extent consistent with the interests of the Agency, every reasonable effort will be made to allow examiners in GS Grade 13 and above to maintain their assigned dockets.

Section 3

Requests for personnel action will be processed promptly by the appropriate party (i.e. supervisor or OHR).

Section 4

No member of the Unit shall be placed in a disadvantageous position with regard to promotions by virtue of officially initiated service on special detail or assignment. If such detail or assignment should preclude or otherwise render impracticable an accurate work performance evaluation for promotion purposes, said member shall be considered as working at the same level of work performance evidenced immediately preceding their entrance on such detail or assignment.

Section 5

- A. The Agency agrees that the promotion of an employee shall not be delayed only because the employee's supervisor has been newly appointed to that position and is unfamiliar with the employee's work.
- B. An employee may elect to delay/defer a promotion. A promotion may not be imposed without the employee's consent.

Section 6

A. Every member of the Unit shall have the right to be considered for promotion to the next higher grade one month prior to completion of the minimum time in grade required by law and regulation, except as provided in subsection B below, provided the member is working in a position identified as a career-ladder position and providing such higher grade position exists. Employees in a career ladder position must meet all of the following requirements to qualify for a career ladder promotion:

1. A full-time employee becomes minimally eligible to be promoted to the next grade level after 52 weeks (2080 hours for a part-time employee) in the current grade (time-in-grade requirement), and 52 weeks (2080 hours for a part-time employee) of specialized experience.
2. Time in Non-pay Status and Promotion Requirements: Time spent in a non-pay status, including AWOL, LWOP, and suspension, does not count toward meeting the specialized experience requirement. Contact the Office of Human Resources if you have questions regarding this issue.
3. The employee has demonstrated the potential for at least fully successful performance at the next higher level, and sufficient work exists at the next higher-grade level; and
4. The employee's last rating of record and current performance level must be fully successful or better. However, the criteria of the Signatory Authority Program shall apply to examiners who are on the Signatory Authority Program.

B. Accelerated Career Ladder Promotions for Patent Examiners

1. Patent Examiners at the GS-05, GS-07, and GS-09 grade levels in all disciplines and specializations are eligible for promotion to the next higher grade after six months in their current grade, provided that they meet all the requirements in Section A. above. Examiners hired at the GS-05 or GS-07 level may be granted up to two accelerated promotions during their first two years. All promotions after the end of the second year of employment must meet the full one-year time-in-grade requirement.
2. Accelerated promotions are subject to the recommendation and approval by the SPE and TC Director. The SPE's evaluation will be based upon successful completion of at least six months of formal and on-the-job training, and the demonstrated ability to work at the next higher grade. The supervisor should carefully consider the examiner's ability to handle the added workload requirements for the examiner at the next level.

C. Career Ladder Promotions for Part-Time Employees:

1. A part-time employee (an employee who works an approved, pre-arranged work schedule each week of between 16 and 32 hours) may receive a career ladder promotion when all qualifications discussed above are met, including time-in-grade and specialized experience requirements.
2. Credit for specialized experience is determined based upon the actual time a part-time employee spends in pay status. The computation of hours in pay status shall include all regular duty time, administrative leave, holidays, annual leave, sick leave, and other paid leave but will not include overtime or continuation of pay under Workers Compensation. One year of general or specialized experience will be credited for each 2080 hours in pay status. Time in Non-pay Status and Promotion Requirements: Time spent in a non-pay status, including AWOL, LWOP, and suspension, does not count toward meeting the specialized experience requirement. Contact the Office of Human Resources if you have questions regarding this issue.

D. Bargaining unit employees are entitled to timely consideration and decisions concerning the granting or denial of a career ladder promotion. Any member who is not promoted within seven biweeks after completion of the minimum time in grade shall have the right to request and receive a written statement from their supervisor after personal discussion between them. The supervisor's statement shall list the reasons for withholding the promotion and explain how the member's performance can be improved to qualify for promotion, including when the promotion may be next considered. This statement may be maintained by the Agency but shall not become a part of the member's OPF.

Section 7

The Agency will provide the criteria for evaluation of participants in such career or promotional advancement programs to the Union.

Section 8

A. A Within-Grade Increase (WGI) is a periodic increase in an employee's rate of basic pay from one step of the grade of their position to the next higher step of that grade. The waiting periods for a WGI are as follows:

- Steps 2 through 4 = one-year (52-week) waiting period;
- Steps 5 through 7 = two-year (104-week) waiting period; and
- Steps 8 through 10 = three-year (156-week) waiting period

- B. The quarter before an employee is due for a WGI, the Agency will inform the employee:
- of the date they will be eligible for a WGI, and
 - If a WGI is denied, the employee will be re-rated and have a new rating of record.
- C. One bi-week prior to the end of each waiting period, the Agency will inform the employee of their eligibility for the WGI.

ARTICLE 19

CAREER DEVELOPMENT AND WORK DETAILS

Section 1

The Agency shall designate certain recurring details as "career development details." A listing of available career development details shall be maintained on the USPTO Intranet. Career development details are details that not only provide assistance in meeting work requirements, but also will provide employees an opportunity to develop their skills, interests, and improve efficiency in administrative and technical fields so that a reservoir of developed employees will be in existence for possible selection to higher level vacancies. Career development details will generally last no more than 120 days.

Section 2

Assignments to career development details shall be made and administered in a fair and equitable manner among every qualified employee who has expressed an interest in a detail. The Agency and the Association encourage highly qualified individuals to participate in career development details. Detail announcements will be posted on the USPTO Intranet no less than two weeks before the announcement closes.

Announcements shall include the location of the detail(s), telework ability, whether the detail hours are examining related hours or not, the duration, the nature of the work, the required application procedures and the minimum qualifications and requirements of an applicant. The Association shall be provided with a copy of each announcement.

Section 3

The term "career development detail" shall include the following, unless the creation of such a detail excessively interferes with management rights, details to:

- A. Office of Patent Quality Assurance
- B. Deputy Commissioners for Patents
- C. Assistant Commissioner of External Affairs
- D. Assistant Commissioners for Patents
- E. Solicitor's Office
- F. Enrollment and Discipline
- G. Any other detail:

(1) for which credit (e.g., points) is given in merit promotion actions,

- (2) which is not normally assigned to the employee and is outside the employee's position description, and
- (3) which requires at least 450 hours work time over a period of four months.

Section 4

Before selection, the skill and ability of the employee and the specific needs of the Agency will be considered. Selection preference shall be given to those qualified applicants who have the least amount of service on career development details. A career development detail which terminated more than four years prior to the announcement of a new detail will be ignored in assigning selection preference. Except in extraordinary circumstances an employee shall not serve on a career development detail a second time in the same area.

Section 5

Full allowance will be made for the time lost while said member is participating in a career development detail. The Agency shall notify affected employees (yearly or quarterly) of the existence and expected duration of conditions in a Group Art Unit or equivalent area which would preclude their participation in a career development detail.

Section 6

The Agency shall provide the Association with the name(s) of the applicant(s) selected to fill the detail.

Section 7

The Agency may assign employees to work details without regard to the provisions of the article when workload requirements exist so as to make alternate assignments to details necessary to carry out the agency mission.

ARTICLE 20
PROFESSIONAL TRAINING AND DEVELOPMENT

Section 1

- A. The Association and the Office agree that the professional training and development of Unit employees is a matter of great importance.
- B. The factors which shall be considered in determining which employees will be selected for training are:
- 1) benefits to be derived by the USPTO
 - 2) resource limitations
 - 3) enhancement of the employee's performance
 - 4) number and type of training sessions previously attended by the employee
 - 5) length of employment in the Office
- C. If the Agency determines that it is in the best interest of the Agency and the employee, the employee may be asked to repeat all or selected portions of training previously given or may be asked to take training. Management shall pay all costs of such training.

Section 2

The Agency recognizes that the reading of technical and legal publications is necessary to keep professionals abreast of recent developments related to their work assignments, and to keep searches up to date. Absent a budgetary emergency, the Office will continue to supply professionals with articles, magazines and books written on legal and technical subjects pertinent to their assignments. In arts involving rapid technical advances, it is recognized that the reading, and classifying of technical publications may require a substantial amount of time. Accordingly, supervisors shall grant professionals a reasonable amount of non-production time, per bi-week, for this purpose.

Section 3

- A. The Agency recognizes that attendance at certain conferences, seminars and meetings outside of the USPTO is necessary for full professional development of the members of the bargaining unit, and is both desirable and in the best interest of the mission of the USPTO. Therefore, the Agency shall annually publish and make readily available (e.g. USPTO intranet page) a list of such outside conferences, seminars and meetings at which attendance was approved in the previous calendar year.
1. For patent examiners, this list shall be maintained in each Technology Center Art Unit for review by Unit members and made available to the Association. This list shall not be read or used as a limitation on such outside symposiums and employees may request other appropriate outside conferences, seminars and meetings under this Section.
 2. For non-examiners, this list shall be maintained in their equivalent area.
- B. A supervisor may authorize:
1. up to 6 hours annually of excused absence for attendance at activities listed in 3A, and
 2. 40 hours of compensatory leave, to be earned in advance, in accordance with applicable law, rule and regulation. This time does not count against the regular compensatory time yearly maximum discussed in Article 26 (compensatory time).
- C. This opportunity will be accorded to those members of the Unit who have demonstrated satisfactory job performance and would most probably benefit the Office mission by their attendance. The Agency may approve requests from other members at its discretion.
- D. Reimbursement for attending or participating in the activities listed in 3A is available.

Section 4

The Office intends to maintain a "Professional Examiner Training Program," under appropriate laws, rules, regulations, and funding constraints. The current program includes the following types of training for selected professionals:

- A. The Office of Patent Training - Intensive in-house training program primarily for all newly hired examiners (Patent Training Academy), and refresher training/master classes for others, to teach the basic legal and procedural skills of patent examining;

- B. Legal Training such as: In-house legal courses; non-duty time legal studies program (Article 21); attendance at PTAB hearings; and legal lectures;
- C. Technical Training such as: In-house technical training; Non-duty time technical studies (see Article 22, tuition assistance for job related technical courses at colleges and universities);
- D. Specialty Training such as: the leadership development program (LDP) for any employee interested in improving skills in areas such as communication and interpersonal relationships;
- E. Employee Selected Training – The office may designate a set bank of hours that members of the BU can use to participate in selected approved training;
- F. STIC/EIC demonstrations and other short training modules; and
- G. Off-site Agency sponsored training.

No training will be offered without other time available to production employees

Section 6

If the Agency assigns patent applications or classification work in the area of technology foreign to the member's training and background, the Agency shall afford the member appropriate classroom or on the job training in the foreign technological area during duty hours. Time spent in training shall be accounted for separately from examining time or classifying time. Alternatively, the member will be moved to an area where they have the requisite education, work experience or training.

Section 7

The Agency shall make and administer assignments to training under this article in a fair and equitable fashion consistent with management rights, workload requirements and budgetary limitations.

Section 8

- A. The parties hereby adopt the guidelines set forth in Commissioner Donald J. Quigg's September 20, 1982 memorandum concerning the Examiner Education Program, with the following modifications:

1. The report generated under Section IX.D.4 shall include an accounting of the number of field trips separately for Unit members and managers.
2. Copies of the report, excluding the information provided in accordance with subsection D.4(c) shall be sent to the Association quarterly.

B. Priority selection by seniority, and by employees with fewer or no past trips will be considered.

Section 9

Employees may be reimbursed for professional memberships related to their job position, such as AIPLA.

Section 10

Employees may elect a week-long (40 hour equivalent) paid sabbatical following any quarter, or 40 hours of sabbatical to be taken at any time during the year. The 40 hours need not be taken consecutively.

ARTICLE 21

NON-DUTY HOURS LEGAL STUDIES PROGRAM

Section 1

- A. A voluntary Non-Duty Hours Legal Studies Program has been established for POPA bargaining unit employees to provide additional legal training to increase the depth of legal knowledge within the Patent Corps and other Agency areas and provide a well-qualified applicant pool for positions requiring legal skills within the office.
- B. This Program reflects the Agency's concern for the continuing development of patent professionals in the POPA bargaining unit and the Agency's desire to increase the professionalism of its employees.
- C. This Program is an optional segment of professional training and is not intended to supersede any mandatory training program or encompass all appropriate legal training. This Program is not intended to be the major source of legal training required to achieve the requisite legal competency for the job positions within the POPA bargaining unit.
- D. Only eligible courses taken directly towards completing a Juris Doctor (JD) degree will be covered by this Program. Note Section 2(B) exception.
- E. Management may reduce, suspend, or terminate funding for this Program when such action is necessary for the proper functioning of the agency. In making such a determination, management will consider similar cutbacks in other non-duty hours training programs in an effort to equitably distribute reductions among all employees. Such determination will take into account the nature and purpose of the training and the adverse effect on the employees and the Agency.

Section 2: Eligibility

- A. This Program is available to any full-time, permanent POPA bargaining unit employee with at least two years of continuous service at the Agency immediately prior to application to the program or an employee with at least two years of continuous service by the reimbursement application deadline of the term the employee enters the Program (identified in Section 5(A) below).
- B. An employee is eligible for participation if the legal training provided under this Program is mission-related. Courses provided at an American Bar Association (ABA) accredited law school that will increase the depth of legal knowledge within the Patent Corps and other Agency areas will be authorized. The Agency will make available lists of courses for which funding has historically been disapproved. These

lists will be updated at least twice per year, prior to the funding request deadlines for the Spring and Fall terms set forth in Section 5(A).

- C. Acceptance at an ABA accredited law school is required. The legal courses for which the Agency provides tuition assistance under this article must be taken for credit at an ABA accredited law school.
- D. Bargaining unit employees who took USPTO-sponsored non-accredited legal studies courses on non-duty time will not be prohibited from retaking the same or similar courses for credit in this Program and will be entitled to all tuition assistance and payment of expenses set forth in this agreement in connection with those courses.
- E. The employee's most recent rating of record must be at least Fully Successful and the employee's current performance must be at least Fully Successful in all critical elements as determined by the employee's cumulative most recent four full quarters of work immediately prior to the Program's application due date. Each request for tuition assistance will be considered as a new request with regard to the eligibility requirements set forth under this Section.
- F. The employee must not have served a suspension of seven days or more in the two years prior to the beginning of the Program's application due date.
- G. To qualify for the full reimbursement amount, participants must remain in full-time status at the Agency during the academic term for which tuition reimbursement is requested. If the employee changes to a part time schedule during that academic term, the employee will be required to repay the Agency for expenses incurred for the amount above the proration permitted for tuition and/or course materials payment.
- H. The employee must obtain approval of their first and second line supervisors. Supervisory approval will be determined expeditiously.

Section 3: Credits and Monetary Expenses

- A. The Agency will reimburse employees for up to 24 credits per fiscal year, not to exceed 88 total credits. Courses must be taken within a total six years, which need not be continuous.
- B. The Agency will not reimburse for the same class more than once. This includes the same class at two different schools, which will be determined based on the course title and description. A request for payment after repayment per Section 3(E) does not constitute as reimbursement for the same class more than once.

- C. For each approved course taken under this program, the employee may request reimbursement for the actual cost up to \$300 per course to purchase or rent required books and course materials (collectively referred to as course materials).
- D. An employee may submit a request for reimbursement of the costs of course materials for courses being taken in a semester without requesting reimbursement of tuition for that course. The Program will cover course material costs for each course that would normally be approved under this Program, up to the \$300 per course limit.
- E. A participant who withdraws from or fails a course taken under this Program will be required to repay the Agency for tuition and course materials up to the amount reimbursed for the course

Section 4: Funding for the Program

- A. Prior to the beginning of each fiscal year, the Agency will share with POPA the budget for the Program. The funding will be calculated to capture the estimated costs of the Program unless a lower amount of funding is determined per section 1.E. The goal of the Program is to maximize reimbursement to participants within the allocated budget.
- B. The allocated funding will be divided into three pools, one pool for each term: Fall, Spring, and Summer and the funding will be allocated as follows:
 - 1. 50% of the available funding for the Fall term;
 - 2. 40% of the available funding for the Spring term, and;
 - 3. 10% of the available funding for the Summer term.
- C. Unused funding for the Fall term will be available for the Spring term. Unused funding for the Spring term will be available for the Summer term. Unused funding for the Summer term potentially will be available for the next Fall term if applications are received early enough.
- D. At the request of either party, the parties will discuss, and if necessary, negotiate to the extent required by law, over the percentage of funding allocated to each pool described in paragraph B of this section.
- E. If requests exceed the allocated amount, or if funding is reduced below what is expected, reimbursements will prioritize participants who are already in the program.
- F. Requests for funding that are received after the deadlines in Section 5 will be paid on a first-come, first-served basis until the funding limit for the academic term is reached. Employees are reminded that requests for reimbursement must be submitted before the first day of a class.

Section 5: Timing of Reimbursement

A. Requests for funding must be made before the following reimbursement application deadlines:

1. By 11:59PM eastern time on August 15th or the upcoming Fall term;
2. By 11:59PM eastern time on January 15th for the upcoming Spring term, and;
3. By 11:59PM eastern time on May 15th for the upcoming Summer term.

B. Receipts for materials as provided in Section 3(C) must be submitted on or before the following deadlines:

1. By 11:59PM eastern time on September 15th for the upcoming Fall term;
2. By 11:59PM eastern time on February 15th for the upcoming Spring term, and;
3. By 11:59PM eastern time on June 15th for the upcoming Summer term.

C. Failure to submit a timely request as outlined in this Article, may result in the application being denied by the Program Administrator.

D. If an employee is enrolled in a law school, but prefers to attend a law school for which the employee is waitlisted, the employee will submit an application based on the current enrollment, and provide a comment on the application that they are waitlisted for a different law school. The employee must notify the Program Administrator which law school the employee will attend prior to the first day of classes, along with the proper documentation. The number of credits covered may not exceed the initial number of credits submitted.

- E. The initial application will dictate the maximum number of credits that will be covered. Classes may be dropped or changed after the initial application, but no additional credits may be added. If employees incur fees for dropped courses, those courses are not eligible for reimbursement as explained in Section 3(E).

- F. Employees who attend a law school that operates on an alternative schedule such as trimesters, and who are not permitted to register by the deadlines above, must submit a written estimate of the expenses for which they expect to request reimbursement, by the closest reimbursement application deadline prior to the start of an academic term. These estimated amounts will be included in the totals to be funded in accordance with Section 4(B).

- G. At the close of each of the requesting periods identified above, the Agency will total the requests to see if the amount allocated will cover the expenses.

- H. If the amount allocated does not cover the amount requested, the Agency will prioritize participants who are already in the program and determine what percentage of the requested funds can be covered by allocated funding (proration).

- I. Each request for funding by participants already in the program will be reduced by the same percentage identified in paragraph Section 5(H).

- J. Reimbursements to the participants will be processed by the Agency through the National Finance Center as soon as this determination can be made. For the Fall term, this reimbursement will not occur prior to October 1 due to budget availability/processing.

Section 6: Procedures

- A. Applications for each semester will be submitted electronically via the non-duty legal studies online system. Submit the completed application and supporting documents (see 5B) to the first-line supervisor by the applicable semester deadline. The first-line supervisor will review the application and verify eligibility. If the application is verified, the supervisor will approve the application, and the system will forward the application to the second-line supervisor for secondary-approval of eligibility. After the second approval, the application will be placed in a queue to await processing,

which will begin after the application deadline. Fall semester applications will not be processed until after the new fiscal year begins in October.

- B. Supporting documents must be uploaded into the system with each application by the deadlines set forth in Section 5(A): proof of registration, course descriptions, invoice, school tuition & fees information, including cost per credit, and a signed continuing service agreement (CSA). If documents are not attainable, notify the Program Administrator in advance of the applicable deadline.
- C. If corrections are necessary prior to the semester application deadline, such as altering the courses/credits, the applicant can open the application and enter a comment with the necessary information. If changes require new supporting documentation, new documents can be uploaded in the system or submitted to the non-duty legal studies mailbox and the Program Administrator notified. Corrections necessary after the application deadline, such as courses/credits, must be submitted electronically to the non-duty hours legal studies mailbox. Such correction cannot increase the overall number of credits.
- D. During the school's drop/add period, if the participant withdraws from a course(s), the employee will submit a notification of the course to the non-duty hours legal studies mailbox. See section 3(E).
- E. By signing the CSA, the employee is certifying that the employee has received and read the Program rules set forth in this Article and the CSA, and understands the employee's obligation to the Agency as a participant.
- F. The employee will submit grade(s) to the Program Administrator within six weeks after the semester ends. If the grades are not available, the employee will notify the Program Administrator within six weeks after the semester ends and will submit the grade(s) as soon as they are available. If an employee fails to provide grades for courses that the USPTO has funded, the employee will be required to repay the USPTO for tuition and course materials up to the amount reimbursed for the courses in accordance with Section 3(E). Upon reimbursement, the employee's CSA will be shortened accordingly.
- G. If the employee resigns from the Agency, the employee will notify the Program Administrator in writing (e-mail notification is sufficient) ten (10) working days prior to separation so that repayment determination can be made. Failure to do so may result in a delay in processing of the employee's release papers.
- H. Failure to comply with the procedures set forth in this Article may result in a denial of reimbursement. Minor corrections or omissions will not be considered a failure to abide by the rules and procedures of this section.

Section 7: Approval of Courses

- A. Employees considering courses for an up-coming semester may contact the Program Administrator for review prior to requesting funding. An e-mail to the Program Administrator at legalstudiesprogram@USPTO.GOV is preferred.
- B. The Agency will not reimburse for tuition or course materials for externships or internships (or similar courses that involve experiential work). In addition, the agency will not cover any credits the employee gets for work done at the Agency.

Section 8: Continuing Service Agreement (CSA)

- A. Subject to 5 U.S.C. 4108(b), an employee who participates in this Program is obligated to continue service with the federal government for 30 days for each credit paid for by the Agency.
- B. If the employee is reimbursed for only course materials, the employee will be obligated to continue service with the federal government for 1 day for every \$50 of course materials paid for by the Agency.
- C. If the employee leaves the federal government prior to completing the length of the continued service, the employee's tuition reimbursement obligation will be on a pro rata basis (based on thirty-day increments).
- D. If the employee separates from the federal government prior to completing the length of the continued service, the employee's required course materials repayment obligation will be for the class(es) for which the continuing service was not completed.
- E. Periods of absence (ie suspension or non-FMLA LWOP) that occur during a covered Academic term will delay the start of the continued service by an equal amount of the time taken for the absence. Periods of suspension or non-FMLA LWOP that occur during service will not count towards the required continued service.
- F. Continued service begins with the end of the term or prior service obligation period, whichever is later.
- G. The "end of the term" is defined as the day of the employee's last final examination or day the last final paper is due for that term.
- H. If reimbursement for credits is prorated, the continued service requirements for the affected credits will be prorated to the same extent as the funding on a whole day basis. For example, if employees are reimbursed 90% of total eligible requested funding, an employee seeking reimbursement for 10 credits would be responsible for

270 of the 300 days: 10 credits X 30 days = 300 days. 300 days X .9=270 days CSA for the prorated term.

- I. To determine continued service if an employee switches to a part-time status, the Program Administrator must be notified and provided with the part-time work schedule. If the part-time schedule is altered, either temporarily or permanently, then the altered schedule must be provided. During the part-time status, the CSA will be based on the actual days worked while on part-time. Actual days worked will follow the part-time requirements that the minimum time worked on a given day is 4 hours.
- J. For year long courses that are graded at the end of the year, if the first half of the course is reimbursed, and the second half is not reimbursed, the CSA will begin after the first half of the course. The employee must pass the course to be reimbursed for the first half of the year long course.

Section 9: Non-Loan Financial Aid

- A. If a participant in the program receives a scholarship, grant, or other non-loan financial aid (collectively referred to as scholarship funds), the scholarship funds will first be used to pay for any course not eligible for reimbursement by the Agency. Any remaining scholarship funds will be deducted from the amount of the total reimbursement for covered courses. The continuing service requirements will be adjusted to reflect only the portion of tuition expenses paid by the Agency. Participants who are charged a reduced tuition compared to the actual tuition charged by the law school will be reimbursed only for the reduced tuition amount.
- B. Participants who receive a scholarship, grant, or other non-loan financial aid are required to disclose the aid received to the Program Administrator at the time of the application for reimbursement or within 1 week of becoming aware of the scholarship, grant or other non-loan financial aid.

Section 10

See Article 31 (Administrative Leave), Section 8 for administrative leave to take the Bar examination

Appendices

1. continued service agreement template
2. Examples of reimbursement calculations

ARTICLE 22

NON-DUTY HOURS TECHNICAL TRAINING PROGRAM

Section 1: Overview

- A. A voluntary Non-Duty Hours Technical Training Program (Program) has been established to develop and maintain a highly skilled workforce, and to promote the development and retention of POPA bargaining unit members by enhancing the employees' knowledge, skills, and abilities.
- B. This Program is an optional segment of professional training and is not intended to supersede any mandatory training programs or encompass all appropriate technical training. This Program is not intended to provide remedial training with respect to the basic technological skills required for the employees' current positions, nor to supersede appropriate classroom or on the job training in foreign technological areas during duty hours. A foreign technological area may be work assigned in an area of technology outside of an employee's training and background.
- C. Supervisors are encouraged to support their employees' voluntary participation in this Program in order to further the mission and meet the performance goals of the USPTO.
- D. Management may reduce, suspend, or terminate funding for this Program, when such action is necessary for the proper functioning of the agency. In making such a determination, management will consider similar cutbacks in other non-duty hours training programs in an effort to equitably distribute reductions among all employees. Such determination will take into account the nature and purpose of the training and the adverse effect on the employees and the Agency. If budget limitations preclude the involvement of all employees interested in this Program, participation will be determined in the following order: grade, degree of signatory authority, and length of service in the current and higher grades at the USPTO.

Section 2: Eligibility

- A. This Program is available to all POPA bargaining unit members who are permanent, non-probationary employees.
- B. The technical courses taken under this Program must be mission-related. In making a determination as to what is "mission-related", supervisors are reminded that the employee's voluntary participation in the Program is to be encouraged. The term "mission-related" is not to be narrowly construed and shall be applied as set forth in Title 5, part 410 of the code of Federal Regulations. The Agency will make available

lists of courses for which funding has historically been disapproved. These lists will be updated at least twice per year.

- C. The technical courses must be taken for credit at an accredited college or university.
- D. The employee's most recent rating of record must be at least Fully Successful, and the employee's current performance must be at least at a Fully Successful level in all critical elements as determined by the employee's cumulative most recent four full quarters of work immediately prior to the Program's application due date. Each request for tuition assistance will be considered as a new request with regard to the eligibility requirements set forth under this Section.
- E. The employee must not have served a suspension of seven days or more in the two years prior to the beginning of the Program's application due date.
- F. The employee must obtain approval of their first and second line supervisors. Supervisory approval will be determined in a fair, equitable and expeditious fashion.
- G. If a supervisor denies an employee's request to participate, the employee may submit written reasons to the Office of Patent Training as to why the employee's participation should be approved. Upon receipt of the written reasons, the Office of Patent Training will either grant approval or provide the employee with a written response within seven days explaining why the request was denied.
- H. Participants must remain in full-time status at the Agency during the academic term for which the tuition reimbursement is approved. If the employee changes to a part time schedule during that academic term, the employee will be required to repay the prorated amount, depending on the part-time schedule, for expenses incurred from tuition and/or course materials payment.

Section 3: Credits and Monetary Limits

- A. Up to \$10,000 (prorated for participants on a part-time schedule) per fiscal year is available to each participant for actual tuition costs. Any number of credits within this monetary limit may be taken under this Program. If the tuition costs exceed the employee's limit, the employee will be responsible for paying any overbalance to the school.
- B. For each approved course taken under this Program, the employee is allocated up to \$300 per course for required course materials (e.g. books and/or lab fees, etc.).
- C. An employee who withdraws from or fails a course (as defined by the school) taken under this Program will be required to repay the Agency for expenses incurred from tuition and/or course materials payment.

Section 4: Procedures

- A. Applications for each term will be submitted electronically via the non-duty technical training online system at least two weeks prior to the beginning of the course with copies of the (1) tuition rate and (2) the course description from the school catalog. Submit the completed application to the first-line supervisor. The first-line supervisor will review the application and verify eligibility. If the application is verified, the supervisor will approve the application, and the system will forward the application to the second-line supervisor for secondary-approval of eligibility. After the second approval, the employee will be asked to upload supporting documentation described in 3B.
- B. Supporting documents must be uploaded into the system after approval. Proof of registration, invoice, school tuition & fees information, including cost per credit, and a signed continuing service agreement. If documents are not attainable, notify the Program Administrator.
- C. If corrections are necessary, contact the Program Administrator. A correction cannot increase the overall number of credits for which reimbursement was originally requested.
- D. During the school's drop/add period, if the participant drops a course(s), the employee will submit a notification of the dropped course to the non-duty hours technical studies mailbox.
- E. The employee will submit grade(s) to the Program Administrator within six weeks after the semester ends. If the grades are not available, the employee will notify the Program Administrator within six weeks after the semester ends and will submit the grade(s) as soon as they are available. If an employee fails to provide grades for courses that the USPTO has funded, the employee will be required to repay the USPTO for tuition and course materials up to the amount reimbursed for the courses in accordance with Section 3.
- F. If the employee resigns from the Agency during a Continuing Service Agreement, the employee will notify the Program Administrator in writing (e-mail notification is sufficient) ten (10) working days prior to separation so that repayment determination can be made. Failure to do so may result in a delay in processing of the employee's release papers.
- G. Failure to comply with the procedures set forth in this Article may result in a denial of reimbursement. Minor corrections or omissions will not be considered a failure to abide by the rules and procedures of this section.

Section 5: Approval of Courses

- A. Employees considering courses for an up-coming semester may contact the Program Administrator for review prior to requesting funding. An e-mail to the Program Administrator at nondutytechnical@USPTO.GOV is preferred.
- B. The Agency will not reimburse for PHD Dissertations, or tuition or course materials for externships or internships (or similar courses that involve experiential work).

Section 6: Continuing Service Agreement (CSA)

- A. Subject to 5 U.S.C. 4108(b), an employee who participates in this Program is obligated to continued service with the federal government for 30 days for each credit or portion thereof paid for by the Agency.
- B. For an employee on a part-time schedule, the CSA will be based on the actual days worked while on part-time. Actual days worked will follow the part-time requirements that the minimum time worked on a given day is 4 hours.
- C. If the employee leaves the federal government prior to completing the length of the continued service, the employee's tuition reimbursement obligation will be on a pro rata basis (based on thirty-day increments).
- D. If the employee separates from the federal government prior to completing the length of the continued service, the employee's required course materials reimbursement obligation will be for the class(es) for which continuing service was not completed.
- E. Periods of absence (i.e., suspension or non-FMLA LWOP) that occur during a covered Academic term will delay the start of the continued service by an equal amount of the time taken for LWOP. Periods of suspension or non-FMLA LWOP that occur during service will not count towards the required continued service.
- F. Continued service begins with the end of the term or prior service obligation period, whichever is later.
- G. The "end of the term" is defined as the day of the employee's last final examination or day the last final paper is due for that term.
- H. Any reimbursement to the USPTO will be based on the actual tuition cost incurred by the USPTO.
- I. To determine continued service if an employee switches to a part-time status, the Program Administrator must be notified and provided with the part-time work schedule. If the part-time schedule is altered, either temporarily or permanently, then the altered schedule must be provided. During the part-time status, the CSA will be

based on the actual days worked while on part-time. Actual days worked will follow the part-time requirements that the minimum time worked on a given day is 4 hours.

Section 7: Termination, Suspension and Reduction

- A. In the event management determines to reduce, suspend, or terminate funding for this Program under Section I(D) of this Article, management will discuss its plans and rationale with POPA at least 30 days in advance or in an emergency, as soon as possible in advance of any changes. This discussion will include an explanation of the circumstances leading to management's change, and include what other actions are being taken by the agency to address the budget problem. Information on cuts for each non-duty time training program at the USPTO will be provided to POPA.

- B. If the funding for the Program is suspended, reduced or terminated as provided in Section I(D), funding will be fully or partially reinstated when such action is no longer necessary for the proper functioning of the Agency.

ARTICLE 23 PAY-LEAVE EARNINGS STATEMENT

Section 1: Report Improper Pay and Other Monetary Issues

Employees who believe that they have not received the correct amount of pay or that the Earnings and Leave Statement is incorrect should contact the Compensation and Benefits Division of the Office of Human Resources (OHR) as soon as possible. Employees should provide as much relevant information as possible to expedite the investigation.

Section 2: Investigation and Response

The Office of Human Resources will investigate each claim and take corrective action, if inaccuracy is confirmed, in an expeditious manner. OHR will respond to the employee with the result of the investigation.

Section 3: Other Documents

Employees are responsible for updating their W-4 and other personal documents/information related to pay, taxes, and benefits such as what is shown in the employee personal page (e.g., direct deposit, financial allotments, health savings account, state tax, Thrift Savings Plan).

Section 4

The Compensation and Benefits Division when notified by an employee that their pay was lost, missing or not received, will expeditiously investigate the facts and circumstances and instruct the proper authorities to issue a replacement payment, if appropriate. If a replacement payment is not received within 72 hours, the Office shall issue emergency supplemental funds to the employee.

Section 5

The Compensation and Benefits Division will correct payroll related errors (i.e., in allotments, tax deductions, annual leave, sick leave, compensatory time, overtime compensation, etc.) normally within two pay periods after notification. The Association will be given written notice of those errors that are not corrected within the two pay periods with the reason(s) why they were not corrected and a proposed date within which they will be corrected.

ARTICLE 24
WORK SCHEDULES

Section 1: Definitions

- A. Basic Work Requirement (BWR) - The number of hours, excluding overtime hours, compensatory time earned and credit hours earned, an employee is required to work or otherwise account for by use of approved: leave, credit hours off, holiday hours, excused absence, compensatory time off, leave without pay, or time off earned as an award. The BWR for full-time employees is eighty (80) hours per two-week pay period (biweek). For part-time schedules, see Section 10 below and the [POPA Part-Time Program Agreement 2021](#)
- B. Tour of Duty - The limits within which an employee must complete the basic work requirement, as determined by the work schedule the employee selects.
- C. Alternate Work Schedules (AWS) - Schedules other than a Fixed Eight-Hour Work Schedule. AWSs include the compressed work schedules (CWS) comprised of the “4/10” and “5-4/9”, and flexible work schedules (FWS) comprised of the Flexible 8 Hour Schedule and Increased Flextime Program (IFP).
- D. Time-Band - The specific hours of the workday within which employees participating in an FWS may complete their BWR.
- E. Mid-Day Flex - Time periods during which employees who participate in an FWS do not work in the middle of the day without being charged leave, and subsequently return and work additional hours on that day within the Time Band allowed for the employee’s work schedule. The employee may “flex” (stop and start working) more than once each day.
- F. Core Hours - The time periods within the tour of duty that an employee must be present for work (including on approved leave or use credit hours, in a travel status). (See 5 U.S.C. 6122(a)(1)).
- G. IFP Credit Hours – Hours used to vary hours worked within the same pay period as defined in Article 27. These hours must be used in the same pay period and cannot be carried over to another pay period.

Section 2: Provisions Applicable to all Work Schedules

- A. All employees must meet the BWR as defined in Section 1A of this Article.
- B. The core hour for POPA bargaining unit employees on a full-time schedule is from 1:00 p.m. to 2:00 p.m. (local time) each Thursday. Exceptions: the core hours for POPA bargaining unit employees in the Office of Policy and International Affairs is

each Wednesday, from 2:00 p.m. to 3:00 p.m. Eastern Time; and, in the Offices of the Chief Financial Officer and Chief Information Office, is each Tuesday from 1:00 to 2:00 p.m. Eastern Time. For the core hour for part-time schedules see the POPA Part Time Program Agreement 2021.

- C. Employees may work approved Regular Credit Hours, compensatory time, and overtime from 4:30 a.m. to 11:59 p.m., Monday through Sunday.
- D. Automated Tools and IT Support during some Duty Hours: Due to the broad range of hours and locations in different time zones available to bargaining unit employees, automated systems may not be available during some or all of an employee's tour of duty. Generally, service for all systems is available from 5:30 a.m. through 11:59 p.m. Eastern Time Monday through Thursday; from 5:30 a.m. to 10:00 p.m. Eastern Time Friday; and, from 9:00 a.m. to 10:00 p.m. Eastern Time Saturday and Sunday and holidays. Employees working outside of these hours must plan for and have alternate work available, if the automated systems are unavailable.
- E. Planned system outages are generally scheduled (all Eastern Time) Monday through Thursdays between 12:00 a.m. and 5:30 a.m.; Friday and Saturdays between 10:00 p.m. and 9:00 a.m.; and Sunday between 10:00 p.m. and 5:30 a.m. These outages may not be announced in advance via email. Employees may check the intranet to see whether any of the systems they intend to use are expected to be unavailable during duty hours. Occasionally, planned system outages may occur outside the planned outage hours, primarily during evenings and weekends. Planned system outages will be announced as far in advance as practicable via email or similar means. Employees may need to arrange their work or their work schedules (if on a flexible schedule) to accommodate these outages.
- F. 12 Hour Work Limitation: Employees, regardless of work schedule or whether the time is recorded as regular time, paid overtime, compensatory time earned, LWOP, Regular Credit Hours earned, or IFP Credit Hours earned, are precluded from recording more than 12 hours in a day, excluding any mandatory 30-minute meal period. However, supervisors may approve an employee to work more than 12 hours in emergency or other rare situations such as a Computer Scientist working on a system outage, or an employee engaged in international or union negotiations.
- G. Exceptions to Work Hour Requirements: Some employees may be required or asked to volunteer to work outside of the established work schedule hours for mission related reasons. Employees must be in a position that supports these exceptions, such as IT engineers working on an automated information system that requires work outside the Time Band or employees in OPIA, OIPC, or other areas of the Agency who are working outside of the normal time bands to interact with foreign stakeholders. Employees must discuss with their supervisors whether they perform any tasks that would support an exception to the established time bands before working hours outside of the time bands.

- H. Employee Responsibilities: Employees are required to attend meetings and training as long as at least 3 business days advanced notice is given. Exceptions include: previously approved leave, the meeting or training is held outside of an employee's CWS schedule and a change has not been approved, or otherwise excused by the supervisor in advance. Employees on flexible schedules may need to arrange their schedule to attend or seek supervisory approval to miss or attend a make-up session of the meeting or training.
- I. Employees are responsible for accurately recording their time, to the best of their knowledge, in the time and attendance system.
- J. Work Schedule Notification: Employees will communicate their work schedule in the collaboration tool as outlined in the [Time and Attendance Tools, Communication, and Collaboration Policy](#).
- K. The smallest period of time worked for which employees may receive credit is a quarter of an hour (15 minutes).
- L. Holiday Pay: See the [Holiday Leave and Working on a Holiday Guidance](#) (November 2019).
- M. Employees are permitted two 15-minute breaks during their workday. The breaks may not occur at the beginning or end of the workday.

Section 3: Full Time Work Schedules

Full-time employees may work any of the following schedules unless a schedule is restricted by management pursuant to other provisions of this article (see Section 9):

- A. Flexible 8-Hour Schedule;
- B. Increased Flextime Program (IFP);
- C. Fixed 8 Hour Schedule; or,
- D. 5-4/9 or 4/10 Compressed Work Schedule (CWS).

Each of these work schedules will be discussed in the sections immediately below.

Section 4: Flexible 8 Hour Schedule

- A. Employees on this schedule are required to work a total of eight hours on each day, Monday through Friday, during the time band of 5:30 a.m. and 11:59 p.m. local time. Arrival and departure times may vary day to day.
- B. Employees may use mid-day flex and return to complete the eight hours later on that same work day as long as the shift is completed during the time band.

Section 5: Increased Flextime Program (IFP)

- A. This is the default schedule for employees, if an alternate schedule is not selected and approved under this article.
- B. The IFP allows a full-time employee to complete the BWR by varying the number of days and the number of hours worked each day during the time bands of 5:30 a.m. and 11:59 p.m. local time Monday through Friday, and between 5:30 a.m. and 10:00 p.m. Saturday local time. Exceptions are described in 2G.
- C. Regular hours may not be worked on a Sunday. However, the tour of duty for IFP shall include Sunday for the purpose of permitting employees to work IFP credit hours.
- D. A workweek consists of seven consecutive days, beginning Sunday and ending Saturday. An employee may not work IFP credit hours or regular hours (or both) on both Sunday and Saturday of the same week. See Article X credit hours.
- E. An employee may choose to vary the number of hours and minutes worked each workday as long as 80 hours is accrued by the end of the pay period inclusive of the core hour requirements. For example, an employee might work: 8 hours on Monday; 8 hours on Tuesday; 4 hours on Wednesday; 9 hours on Thursday; 11 hours on Friday; and 12 hours on Monday; 12 hours on Tuesday; 12 hours on Wednesday; 2 hours on Thursday; 2 hours on Friday, for a total of 80 hours. Employees are responsible for accurately recording their work time, to the best of their knowledge.
- F. Employees must work or take leave for a minimum of four days per workweek. At least 15 minutes of leave taken in a day is considered a day for this requirement. Only one of the minimally four days per workweek may be a weekend day (Saturday or Sunday), the core hour must be accounted for.
- G. Leave, including credit hours and compensatory time, may not be used to consistently avoid working during the core hour.
- H. If the employee does not meet the 80-hour requirement, overtime, compensatory time, or credit hours worked will be credited as regular time.
- I. Employees must notify their supervisor if they will be flexing for an entire weekday, prior to the absence. Employees must contact their supervisor or designee orally, by phone, by email or by instant messaging prior to the employee's scheduled start time, if they will be flexing on a weekday when the employee had previously indicated that they would be at work. In the case of emergencies, the employee must notify their supervisor as soon as practicable.
- J. Government closure and no telework agreement: Employees on IFP who report to the Alexandria, VA headquarters, and who do not have a telework agreement may

be excused up to eight hours (8) from the Agency when the Office of Personnel Management (OPM) closes government offices in the DC area. If the employee has arrived at Headquarters and has worked less than eight (8) hours, the employee may claim administrative leave up to an eight-hour total. For example, if an employee has worked six hours and then OPM closes the government, the employee may claim two hours of administrative leave. If the employee has not arrived at Headquarters, the employee may claim a total of eight hours. Employees working in the regional offices will follow the guidance announced for their office, usually given by the regional office director or assistant director.

Section 6: Fixed 8-Hour Work Schedule

- A. The Fixed 8-Hour Work Schedule requires the employee to work eight hours per day Monday through Friday, plus an unpaid 30-minute meal break each day, with fixed arrival and departure times. The fixed hours must be set between 5:30AM and 10PM. The fixed hours need not be the same times every day.
- B. An example of this schedule is 8:30 a.m. to 5:00 p.m., Monday through Friday.
- C. Because the beginning and end times and workdays are fixed, the employee cannot earn and use credit hours or use mid-day flex.
- D. Beginning and Ending Times: Daily shifts will begin and end on quarter-hour increments for employees working a Fixed 8-Hour Work Schedule (Examples: 6:30 a.m. to 3:00 p.m.; 9:15 a.m. to 5:45 p.m.; but not 6:50 a.m. to 3:20 p.m.).

Section 7: Compressed Work Schedules (CWS)

- A. Compressed Work Schedules are fixed schedules that allow employees to complete the BWR in fewer than ten days in a pay period. Arrival and departure times must be specified in advance and consistent each biweek, but they need not be the same each day or week. Work must be completed during the hours of 5:30 a.m. and 11:59 p.m., Monday through Friday local time.
- B. There are two options under this work schedule, both requiring an unpaid 30-minute meal break. These are:
 - 1. 4/10 Plan: an employee fulfills the BWR in eight 10-hour days. Participants work four days each week with one scheduled day off per week. The employee must have fixed start and end times within the time bands established by this article. Employees participating in the 4/10 schedule, must select the same day off each week absent specific approval from the supervisor.
 - 2. 5-4/9 Plan: an employee fulfills the BWR in nine workdays: eight 9-hour days and one 8-hour day. Participants work five days in one week, and four days the other

week, with one scheduled day off per bi-weekly pay period. The 8-hour day is always worked on the last workday of the pay period. The employee must have fixed start and end times within the time bands established by this article.

- C. An employee will arrange their work schedule with their supervisor in advance. For the 4/10 plan, identify the day of the week that will be the employee's non-work day. For the 5-4/9 plan, identify the day of the bi-week that will be the non-work day. Subject to supervisory approval prior to the employee beginning the work schedule, the employee may select Monday, Wednesday or Friday (for OPIA, Monday or Friday) as the non-workday. Tuesday and Thursdays will be considered required work days (for OPIA, Mondays and Fridays will be considered required work days). Note the holiday leave exception in F below.
- D. A 30-minute unpaid meal break is required during each work day. The meal break may not be at the beginning or end of a day. A 30-minute paid meal break is only required if more than 6 hours are worked.
- E. Employees who work on a holiday are entitled to holiday premium pay at their rate of basic pay, up to the number of hours of the CWS that fall on a holiday. Holiday premium pay is subject to the biweekly premium pay cap. (See 5 C.F.R. § 550.105). See the [Holiday Leave and Working on a Holiday Guidance](#).
- F. Holiday Leave: An employee who is relieved or prevented from working on a day designated as a holiday is entitled to pay with respect to that day for the number of work hours scheduled. The following rules apply when a holiday falls on a scheduled non-work day:
 - 1. If a holiday falls on a non-workday of an employee - except for holidays falling on a Sunday non-workday - the employee's preceding workday is the designated "in lieu of" holiday. (See 5 U.S.C. 6103(b)) If a holiday falls on a Sunday non-workday of an employee on a compressed work schedule, the employee's subsequent workday is the designated "in lieu of" holiday.

Employee's non-work days	Holiday or day off in lieu of holiday	Day off
Fri, Sat, Sun	Friday	Thursday
Sat, Sun, Mon	Monday	Tuesday
Sat, Sun, Wed	Wednesday	Tuesday

- 2. The head of the Agency may prescribe a different "in lieu of" holiday for full-time employees on a compressed work schedule when it is deemed that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact." (See 5 U.S.C. 6103(d)). This will be conveyed to affected employees at least one biweek in advance.

3. Employees on established CWS schedules on the effective date of this agreement may continue to work the same schedule without the need to request approval from their supervisor for the “in lieu of” day.

G. Credit hours cannot be earned or used

H. Mid-day flex does not apply to this schedule.

I. With advance supervisory approval, an employee may switch the employee’s day(s) off to another day within the same pay period, including Tuesdays and Thursdays, however the employee may not routinely change their schedule.

J. Authorized work performed outside an employee's work schedule (i.e., in excess of 10 hours, 9 hours or 8 hours, depending upon the schedule) or in excess of 80 hours per pay period or on any non-work day, is overtime work. Employees are entitled to overtime compensation or compensatory leave as appropriate for overtime work in accordance with applicable provisions of law.

Section 8: Selecting and Changing Work Schedules

A. Placeholder: selecting a schedule after the CBA is in effect, but not have to wait until the beginning of the next quarter. Employees may change work schedules at the beginning of any quarter by notifying their supervisor of the intended schedule, including fixed arrival and departure times and non-work days as appropriate). Notification should be given during the final pay period of the previous quarter. If required, in accordance with the other provisions of this article, supervisory approval must be gained before changing schedules.

B. Upon request of the employee, supervisors may allow an employee to change work schedules at other times, but changes may be delayed until the beginning of the next biweek.

C. Employees participating in a work schedule other than the default IFP may withdraw at any time by notifying the supervisor with one bi-week’s advanced notice, unless exigent circumstances exist. Employees who withdraw will revert to the IFP. Employees will be permitted to elect another work schedule in accordance with 8B.

D. Denial of a work schedule as well as restrictions to the work schedule shall be based on one of the reasons set out in Section 9 below.

Section 9: Restrictions on Work Schedules

A. In accordance with the provisions below, all employees shall be authorized the unrestricted use of any CWS or FWS.

- B. Work schedule restrictions (including imposition of an eight-hour fixed schedule) shall be based on one of the following:
1. Operational considerations, related to the work situation only (not related to job performance);
 2. Abuse of the particular work schedule, meaning misconduct of a serious nature during the scheduled work days that would be alleviated by a fixed schedule; or
 3. Requirement for close supervision for the initial training required to understand and perform the duties of the position, for example new hires in the academy.
- C. Where operational considerations do not permit an employee to work an identified flexible schedule, the employee will be permitted to work a modified flexible schedule approved by their supervisor.
- D. Probationary employees are subject to a modified work schedule as described in Article X (Probationary Employees).
- E. Employees transferring from one division to another will be required to obtain approval, from the new supervisor, of their previous election or make a new election at the time of the transfer. Upon supervisory approval the employee can begin participation in a work schedule other than the normal tour of duty at the beginning of the next pay period. It is recognized that it is possible that the new position may be such that the employee must be denied the opportunity to participate or have their participation restricted.
- F. All disapprovals, or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the work schedule selected. Electronic copies of the disapproval, or restriction, and justification therefore, shall be furnished to each employee affected at least two weeks prior to the time when the denial or restriction is to take effect. The schedule may be denied or restricted by an emergency situation, or when the nature of a business unit's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification. Justification for restriction or denial shall be reviewed at the request of the employee. The appropriate supervisory official shall review the request and issue a written decision thereon within ten working days. A favorable decision shall entitle the employee to begin participation in the requested work schedule the following work day, or, if it is a different type of work schedule (e.g. employee selects a compressed schedule after working an alternate schedule), at the beginning of the next pay period.

Section 10: Part-time Work Schedules

- A. For POPA bargaining unit employees, please see the POPA [Part-time Agreement Program 2021](#).
- B. Requests for Part-time duties in other business units will be handled on a case-by-case basis based on the needs of the business unit and the employee's circumstances.

ARTICLE 25
OVERTIME

Section 1

When the Agency deems there is a specific need for compensated overtime or that such is a proper and fit manner to expend funds, then overtime shall be authorized for each bargaining unit member in accordance with the following criteria:

- A. the amount of work to be done;
- B. the funds available to do the work;
- C. the ability of the member of the Unit to satisfy the specific need;
- D. the ability of the member of the Unit to perform the work to be done in an independent manner during the period of overtime;
- E. demonstrated effectiveness in producing the required quality and quantity of the work product involved;
- F. employee performance is at least fully successful at the time overtime is approved (see section X for patent examiners);
- G. employees are limited to a maximum number of overtime hours, as determined by the Agency, however the statutory pay cap may prevent certain employees from working the biweekly total of hours allowed by management, and
- H. Technology Center directors or equivalent in business units may authorize individual exceptions to the set hour limit to meet specific needs of the Agency, but individual exceptions may not be made in violation of the statutory pay cap.

Section 2

The above criteria shall be uniformly applied in any cost center for which overtime is authorized. Insofar as practicable, overtime will be on a voluntary basis. (For example, employees responsible for critical infrastructure may be required to work paid overtime in emergency situations.) Justification for restricting or denying overtime shall be in writing if requested by the member of the Unit affected.

Section 3: Overtime Hours and Pay Limitations

Overtime pay is pay for hours of work officially authorized by the Agency and approved in advance for the employee. Each Business Unit Head or designee is responsible for ensuring that these procedures are enforced:

- A. Business units may determine a maximum number of overtime hours, unless otherwise limited by law, rule or regulation. The Agency reserves the right to further reduce the amount of overtime hours and pay due to budget limitations or in the event that workload reduces the need for overtime.
- B. For Patent examiners, on a biweekly basis and in advance, each Technology Center Director or designee will approve an overtime authorization list identifying those employees authorized to work overtime hours for that pay period and the maximum number of hours authorized for each individual.

Section 4: When Overtime Hours May be Performed

- A. Overtime hours may be worked on any day of the week including Saturdays, Sundays and holidays. Holiday work must comply with the agency's policy on working on a holiday.
- B. A maximum of 12 hours, including the regular duty hours on a workday (or hours counting toward the 80-hour biweekly requirement for IFP) and overtime hours, may be worked on any day.
- C. Overtime hours may not begin before 4:30 a.m. and must be completed by 11:59 p.m.
- D. Overtime may be worked in fifteen-minute increments.
- E. First-year employees will be required to demonstrate effectiveness in producing the required quality, pendency and quantity of the work product in an independent manner in order to be authorized to work overtime.

Section 5: Temporary Prohibition on Working Overtime

- A. An employee will be prohibited from working overtime hours during any pay period in which the employee serves a suspension.
- B. If the employee is under active investigation or proposal for disciplinary or adverse action for time and attendance, work schedule or work credit abuse, an employee may be temporarily prohibited from working overtime hours. This temporary prohibition of working overtime hours will last no longer than 100 days from the date notified of the investigation or proposal, unless the issue is referred to the Inspector General or the Department of Justice.

- C. On a day when an employee has requested to use sick leave due to the employee's own illness, the employee must obtain prior approval from their supervisor in order to work overtime hours.

Section 5: Overtime Eligibility for Patent Examiners

- A. An employee must be performing at least at the fully successful level in all critical elements of their performance appraisal plan (PAP) before management authorizes overtime hours.
- B. Biweekly authorization may be granted during the first quarter of the fiscal year based on at least fully successful performance of all critical PAP elements during the previous fiscal year, unless an employee fails to achieve the fully successful level in any critical element during the fourth quarter of the previous fiscal year. Furthermore, an authorization granted for the first quarter of the fiscal year may be rescinded during that period if the employee's performance warrants removal of authorization to work overtime hours.
- C. In the event an employee fails to achieve the fully successful level in any critical PAP element for any given quarter, they will be prohibited from working overtime hours for the following quarter.
- D. On a biweekly basis during the second, third, and fourth quarters of the fiscal year, if an employee's year-to-date productivity or year-to-date docket management achievement falls below the fully successful level, they will be prohibited from working overtime hours. Once the year-to-date achievement is brought up to the fully successful level, on a biweekly basis, the employee will again be authorized to work overtime hours.
- E. CD-81 policy: Authorization (CD-81) for the upcoming pay period will be based on an examiner/production employee's performance from the previous pay period rather than on the employee's performance in the pay period during which the CD-81 authorization is being prepared. Thus, employees and supervisors will now know with certainty when the CD-81 is prepared whether the employee will be authorized to work paid overtime for the entirety of the next pay period. For example, in order to approve a CD-81 for pay period 15, the Supervisor during pay period 14 will look at the final production and docket management reports for pay period 13 to determine eligibility for working overtime in pay period 15. Exceptions: in the first pay period of a new fiscal year, the CD-81 authorization will initially be based upon an employee's performance in pay period 25 of the previous fiscal year. But as with the previous policy, supervisors will re-evaluate overtime eligibility after final end-of-fiscal year reports are issued and complete any CD-81 corrections consistent with those reports. Supervisors will use a similar process for the first pay period of Quarters 2, 3 and 4. The CD-

81 authorization will be based on an employee's performance in the next-to-the-last pay period of each of Quarters 1, 2, and 3. Supervisors will then re-evaluate overtime eligibility after the end-of-quarter performance reports are available and complete any necessary CD-81 corrections.

ARTICLE 26

COMPENSATORY TIME

Section 1: Types of Compensatory Time

Eligible bargaining unit members may earn three types of compensatory time: regular compensatory time (Section 2), religious compensatory time (Section 3), and maternity/paternity compensatory time (Section 4).

Section 2: Regular Compensatory Time

- A. Eligible bargaining unit members may earn compensatory time with supervisory approval.
- B. Compensatory time must be used within twenty six pay periods after it is earned. If an employee does not use compensatory time during the twenty six pay periods, they will be paid for the time at their overtime rate.
- C. Consistent with the needs of the Agency and in accordance with relevant law and regulations, no request for using compensatory time shall be denied if, at the time of the request, the employee
 - 1. Has no interviews or meetings scheduled for the leave period,
 - 2. Is under no duty to respond during the leave period to an individual who is under a running statutory time constraint, or
 - 3. Makes appropriate arrangements for such interviews, meetings, and/or communications.

Requests to use compensatory time will be deemed approved so long as the above 3 requirements are met.

- D. For production employees: Compensatory time off hours will be deducted from a bargaining unit member's production time for the bi-weekly period in which the time off was taken. The compensatory time hours worked will be added to the member's production time for the bi-weekly period in which the time was worked.
- E. Compensatory time may be worked during the following hours:
 - 1. Regularly scheduled work days: Beginning at 4:30 AM, Ending at 11:59 PM

2. Unscheduled or compressed days off: Beginning at 4:30 AM, Ending at 11:59 PM
 3. Weekends: Beginning at 4:30 AM, Ending at 11:59 PM
 4. Holidays: Beginning at 4:30 AM, Ending at 11:59 PM (the restriction that comp time must be earned either before or after the employee earns holiday pay has not changed).
- F. All eligible bargaining unit members may earn up to 400 hours of compensatory time and/or credit hours per fiscal year, excluding those hours earned in the maternity/paternity and religious compensatory time programs.
- G. An employee must be performing at least at the fully successful level on all critical elements of his/her performance appraisal plan before being authorized to work compensatory time. Fully satisfactory performance will be based on an employee's most recent full four quarters of work. First-year examiners, to be authorized compensatory time, will be required to reach and maintain a fully successful performance level of productivity as established by the Technology Center Director. No technology center specific eligibility restrictions will be applied to earning compensatory time. If the Office determines it is necessary to limit the earning of compensatory time in a specific technology center due to lack of available work, the Office will notify POPA and affected employees in advance. Any limitations will be maintained only as long as necessary to ensure sufficient work is available to employees.
- H. The earning and use of compensatory time contains no waiver of due dates. The employee is responsible for making arrangements to meet established due dates or obtaining adjustments as allowed by their supervisor. An employee is, as always, responsible for returning telephone messages promptly.
- I. An employee cannot carry forward more than a cumulative of 80 hours of compensatory time and credit hours (see Article 27), except religious compensatory time and those earned under the maternity-paternity policy, from one pay period to the next. Of the 80 hours, the number of credit hours carried forward may not exceed 24.
- J. This article covers full-time and part-time employees in the bargaining unit. Compensatory time may be earned in accordance with the regulations governing the earning of overtime. Part-time employees may earn compensatory time only for hours of work in excess of scheduled 8, 9, 10 hours a day, or 40 hours in a week. Further, a part-time employee cannot carry forward more than a pro-rata share of 80 hours of compensatory time of any type, excluding religious compensatory time, from one pay period to the next. Part-time employees will be limited to earning a pro-rata share of 400 hours of compensatory time per fiscal year, excluding those hours

earned under the maternity-paternity policy and the religious compensatory regulation. The pro-rata share will be determined by dividing the number of part-time employee's regularly scheduled hours of work by forty hours.

- K. The use of compensatory time will follow the same guidelines as annual leave in that the use of compensatory time must be requested in advance except when the government is on unscheduled leave.
- L. Compensatory time must be earned in advance of being used except for religious compensatory time.
- M. The same pay cap limitations that apply to paid overtime apply also to compensatory time. Compensatory time, by regulation, cannot be earned for the hours when holiday premium pay is authorized. This article authorizes compensatory time as an alternate to regular overtime, but does not authorize compensatory time as an alternate to holiday premium pay.
- N. Compensatory time may not be earned on a day when the employee is incapacitated because of personal sickness.
- O. An employee may not earn compensatory time on any normal business day until the employee has completed their normal work schedule, or before their normal work hours begin. The amount of compensatory time that may be earned on Saturdays and Sundays during anyone pay period is thirty two (32) hours.
- P. Compensatory time may not be utilized as a means to constantly substantially avoid accessibility during core hours.
- Q. The Agency has the discretion and authority to ease any of the restrictions set forth above on a case by case basis or for purposes of operational need.
- R. The Office will notify employees if they have compensatory hours which have not been used twenty two (22) weeks after it was earned, to allow time for employees to schedule earned compensatory time before it expires.
- S. Each year, employees will be informed of the maximum number of hours of compensatory time and overtime they can work on a biweekly basis, organized by grade and step, as well as the pay table for the year.

Section 3: Religious Compensatory Time

- A. Consistent with the needs of the Agency and in accordance with relevant law and regulations, an employee will be advanced compensatory time when their personal religious beliefs require abstention from work for certain periods of the workday or workweek.
- B. The employee must submit a request for religious compensatory time off in writing in advance of the religious observance. This will be done using the automated time and attendance system and/or by email to the employee's first-line supervisor. The request should include the following information (if using the time and attendance system, include it in the remarks block):
 - 1. The name and/or description of the religious observance for which the employee's personal religious beliefs require them to be absent from work;
 - 2. The date(s) and time(s) the employee plans to be absent to participate in the religious observance; and
 - 3. The date(s) and time(s) the employee plans to earn religious compensatory time off to make up for the absence within 13 pay periods before or after the religious compensatory time off will be used. The employee may adjust these dates and times by notification to their first-line supervisor in writing.
- C. Religious compensatory time may be earned either before or after the absence from work. If religious compensatory time off is to be earned before the absence, it must be earned within the 13 pay periods preceding the pay period in which the targeted religious observance commences and must be linked to specific dates and times for future use. If religious compensatory time off is to be earned after the absence, it must be earned within 13 pay periods after the pay period in which the employee used the religious compensatory time off. The 13 pay periods are calculated beginning with the first pay period beginning after the date on which the employee used the religious compensatory time off.
- D. An employee's request for religious compensatory time off will not be granted unless the employee simultaneously schedules the hours during which they intend to work to earn the compensatory time.
- E. The employee shall accurately record religious compensatory time off earned and used on their timesheet(s) in the automated time and attendance system.
- F. An employee may only accumulate the amount of religious compensatory time off needed to cover the specific dates and times for which the employee has submitted a request for religious compensatory time off.

- G. If the employee fails to earn religious compensatory time off within 13 pay periods after taking religious compensatory time off, the Agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's balance of compensatory time off for travel, compensatory time off in lieu of regular overtime pay, time off awards, credit hours, and annual leave. The balance may also be adjusted by converting the religious compensatory time off to leave without pay.
- H. If an employee does not use their earned religious compensatory time off as planned, the balance of unused religious compensatory time off may be redirected toward an approved future religious observance; however, the employee may not earn any additional religious compensatory time off until the retained amount of religious compensatory time off has been used or the need to earn additional religious compensatory time off has been properly established and documented.
- I. Accumulated religious compensatory time off that is not used as planned is not subject to forfeiture; unused religious compensatory time off hours remain to the employee's credit until used, or the employee's separation or transfer. Upon separation or transfer, unused religious compensatory time off hours will be paid out at the employee's overtime rate.
- J. In the event that an adjustment to the date(s) and time(s) of planned religious compensatory time worked is required, the employee must submit a revised request to reflect changes for approval.
- K. The statutory pay cap, which applies to overtime and earning regular compensatory time, does not apply to earning religious compensatory time.

Section 4: Maternity/Paternity Compensatory Time

Maternity/Compensatory Time is covered in Article 30.

Section 5: Travel Compensatory Time

Each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off for travel.

ARTICLE 27

CREDIT HOURS

1. Credit hours are available to POPA bargaining unit full time employees, who are limited or barred from earning compensatory (comp) time due to the overtime pay cap, subject to the conditions below. Employees covered under this section would be all those who cannot work the maximum amount of overtime allowed by their business unit in a pay period because of pay cap regulations. This program is also available to POPA bargaining unit part-time employees - see section 10 below for further limitations unique to part-time employees. Credit hours worked under the IFP work schedule (i.e. used in the same biweek they are earned) are covered under Article 24, Section 5.
2. To be eligible to work credit hours, a full time employee must be on a flexible schedule.
3. The number of credit hours that can be earned on Saturdays and Sundays during any one pay period is a maximum of sixteen (16) hours.
4. Credit hours must be worked within an employee's non-overtime tour of duty.

Holiday exception: Credit hours may be worked on a holiday for work in excess of the basic work requirement of 8 hours on a holiday. Since holiday pay is limited to eight hours for those on a flexible schedule, a maximum of 4 credit hours may be earned on any holiday, either before or after the 8 hours of holiday pay is earned.

5. Credit hours subject to the yearly cap (see paragraph 9 below) must be earned before being used.
6. An employee must be performing at least at the fully successful level in all critical elements of their performance appraisal plan before being authorized to work credit hours. Fully satisfactory performance will be based on an employee's most recent full four quarters of work. No other specific restrictions based on business unit or sub-unit such as art unit, work group or technology center will be applied to earning credit hours.
7. Employees using credit hours under this program are responsible for making arrangements to complete work assignments when due.
8. The combined total of credit hours and comp time hours, excluding religious comp and maternity/paternity compensatory hours, carried forward from one pay period to the next may not exceed 80. Of the 80 hours, the number of credit hours carried forward may not exceed 24. Credit hours worked under the IFP work schedule must

be used in the same biweek they are earned, and are covered under Article 24, Section 5.

9. The combined total of credit hours and comp time hours earned, excluding those comp hours earned under maternity/paternity and religious compensatory time, may not exceed 400 in a fiscal year.
10. The use of credit hours will follow the same guidelines as annual leave in that the use of these hours must be approved in advance except when the Government is on unscheduled leave.
11. Credit hours may ordinarily not be earned on a day when the employee is incapacitated because of personal illness.
12. Credit hours should not be used as a means to constantly substantially avoid accessibility on core hours.
13. All credit hours must be used before starting a compressed work schedule or before starting a fixed eight-hour work schedule.
14. The Agency has the discretion and authority to ease any of the restrictions set forth above on a case by case basis or for purposes of operational needs.
15. Credit hours may be worked during the following hours, for full time employees:
 - a. Regularly scheduled work days: Beginning at 4:30 AM, Ending at 11:59 PM
 - b. Weekends: Beginning at 4:30 AM, Ending at 11:59 PM
 - c. Holidays: Beginning at 4:30 AM, Ending at 11:59 PM (the restriction that credit hours must be earned either before or after the employee earns holiday pay has not changed)
16. Part-time employees can earn credit hours as follows:
 - a. Part-time employees' yearly allotment of credit hours is prorated the same as for compensatory time.
 - b. For carry-over purposes, a part-time employee may carry-over credit hours from one biweekly pay period to a subsequent biweekly pay period, an amount equal to one-fourth of their biweekly work requirement. Credit hours worked under an IFP work schedule must be used in the same biweek they are earned, and cannot be carried forward
 - c. Part-time employees may earn credit hours after their scheduled work day or on unscheduled work days. A part-time employee's unscheduled Monday to Friday

work days are part of the part-time employee's tour of duty for the purpose of earning credit hours. Part-time employees may not earn credit hours on the weekends or on holidays.

ARTICLE 28

ANNUAL LEAVE

Section 1

The earning of annual leave, as provided by applicable law, is a right; however, the use of annual leave is granted subject to the needs of the Office.

- A. Consistent with the needs of the Office, employees and supervisors will schedule annual leave as far in advance as is necessary and reasonable.
- B. The employee shall request annual leave of their immediate supervisor. So as to provide a prompt decision on leave requests, the supervisor shall designate other employees in the Art Unit or Technology Center (or similar administrative area) who shall have the authority to grant an annual leave request when the supervisor is not available to grant the request. Requests may be made by email, verbally, phone call, voicemail, instant message, or WebTA. For attempts made by phone call, after two attempts to request such leave, the employee shall leave a message for the supervisor or the supervisor's designees).
- C. Consistent with the needs of the Office, annual leave will be granted if, at the time of the request, the employee (1) has no interviews or meetings scheduled for the leave period, (2) is under no duty to respond during the leave period to an individual who is under a running statutory time constraint, or (3) makes appropriate arrangements for such interviews, meetings and/or communications. Requests will be deemed approved so long as these requirements are met.

Section 2

An employee will be granted annual leave, compensatory time, or leave without pay to attend a funeral.

Section 3

An employee will be granted annual leave as a substitute for sick leave, including for maternity/paternity and bereavement purposes.

Section 4

An employee may request advanced annual leave in an amount not to exceed the amount of annual leave the employee would accrue in the remainder of the leave year. An employee is not required to exhaust their existing annual leave balance before advanced annual leave is granted. Advanced annual leave may be substituted for leave without pay under FMLA.

ARTICLE 29

SICK LEAVE

Section 1

- A. Requests for and approval of sick leave shall be made as far in advance as practical and shall be made directly to the employee's immediate supervisor or supervisor's designees in the absence of the supervisor. Requests may be made by email, phone call, voicemail, instant message, verbally or WebTA (or equivalent time sheet). Requests for sick leave will be deemed approved when made.
- B. When the need for sick leave is not known in advance, the employee or employee's designee, shall request sick leave directly from their immediate supervisor or the supervisor's designees by 9:30 a.m. local time or as soon as practical thereafter. Requests in this situation may be made by email, phone call, voicemail, instant message, WebTA (or equivalent time sheet) or verbally. If a phone call is made without reaching the supervisor (or designee), the employee shall leave a voicemail for the supervisor or the supervisor's designees.
- C. Employees are required to request additional sick leave on each day they are absent unless leave for a continued sickness has been previously approved. Sick leave requests shall be granted for purposes approved by law and government-wide regulations.
- D. Sick leave shall be granted for absences due to medical, dental, optical examinations or treatment, incapacitation and serious health condition due to physical or mental illness, injury, pregnancy, childbirth, adoption of a child, or certain circumstances involving communicable diseases. Sick leave may be used to care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, optical examination or treatment, as well as to care for a family member with a serious health condition, to arrange and attend funeral services for a family member.
- E. Employees shall not be required to furnish an acceptable medical documentation to substantiate requests for approval of sick leave unless:
 - 1. The employee has not complied with this Section; or
 - 2. The employee is on leave restriction; or
 - 3. There is evidence as to the invalidity of their claim to such leave.

- F. Where the nature of the illness was such that an employee did not or could not see a medical practitioner, the Office may waive the requirement for medical documentation.
- G. An acceptable medical documentation is administratively acceptable evidence for the need for sick leave. An employee's self-certification as to the reason for their absence may be considered administratively acceptable evidence. Documentation from a health care practitioner may be considered administratively acceptable evidence.
- H. A person shall be placed on sick leave restriction only if there is evidence of sick leave abuse and the restriction is justified in writing. The mere amount of leave used for illness does not constitute abuse.
- I. Sick leave restrictions shall be administered as follows:
 - 1. In individual cases, if there is evidence showing that an employee is abusing sick leave privileges, the employee shall first be counseled. If there is no improvement, the employee will be notified in writing that an acceptable medical certificate will be required for each subsequent absence for sick leave purposes.
 - 2. Cases requiring an acceptable medical certificate for each sick leave absence shall be reviewed by a supervisor, for the purpose of determining whether there is a need to continue the restriction. Such review shall take place at the end of six (6) months from the date of the notice to the employee requiring an acceptable medical certificate. When it has been determined that there is a need to continue the restriction, the employee shall be notified in writing. If there is no such notice, the previous notice shall be removed from the records.
 - 3. If a grievance is filed, placing an employee on sick leave restriction shall be stayed for 45 days or until the final Agency decision is rendered, whichever occurs first.

Section 2

An employee may request up to 240 hours of advanced sick leave (prorated for part-time employees).

Section 3: Voluntary Leave Bank Program (VLBP)

Employees may be eligible for the VLBP if they are a current leave bank member and have exhausted accrued sick leave and annual leave, and they expect to be on LWOP

for at least 24 hours. Donated leave from the VLBP may be used during a medical emergency.

Section 4: Voluntary Leave Transfer Program (VLTP)

Employees may be eligible for the VLTP if they have exhausted all accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Employees may only receive leave voluntarily donated by other employees under the VLTP during a medical emergency.

ARTICLE 30

MATERNITY/PATERNITY LEAVE

Section 1: USPTO Policy for Non-Probationary Employees

Generally, the USPTO allows for absences of up to 6 months for maternity/paternity purposes (i.e., for pregnancy, childbirth, adoption, and foster care) for non-probationary, non-trial employees. In accordance with applicable laws, regulations, Agency policy and this Agreement, employees may use any combination of available paid parental leave, sick leave, annual leave, advanced sick and/or annual leave, donated leave from the voluntary leave bank or transfer programs, compensatory time, credit hours (if applicable), or leave without pay (LWOP) or Paid Parental Leave under FMLA for maternity/paternity purposes. The use of FMLA when combined with other leave in this section may result in a total of 9 months off or a flexible schedule for the first year after the birth, adoption or placement of child.

Section 2: Probationary Employees With Less Than One Year of Federal Government Service

USPTO maternity/paternity policy for probationary employees who have less than one year federal government service allows a parent to take off up to eight weeks after the birth or placement (adoption or foster care). This time can be accrued sick leave, annual leave, compensatory time or leave without pay (LWOP). Employees who are eligible to work compensatory time may earn and use up to 160 hours of compensatory time. Probationary employees are not normally granted advanced leave (sick or annual). Requests will be considered on a case-by-case basis. Requests for additional LWOP will be considered on a case-by-case basis considering how far along the probationary period is, required training remaining, how the employee is progressing and/or the likelihood of retention.

Section 3: Probationary Employees With One or More Years of Federal Government Service

USPTO maternity/paternity policy for probationary employees who have one or more years of federal government service allows a parent to take off up to twelve weeks after the birth or placement (adoption or foster care). This time can be accrued sick leave, annual leave, compensatory time, or leave without pay (LWOP) or Paid Parental Leave (PPL) under FMLA. Employees who are eligible to work compensatory time may earn and use up to 160 hours of compensatory time. Probationary employees are not normally granted advanced leave (sick or annual). Requests will be considered on a

case-by-case basis. Requests for additional LWOP will be considered on a case-by-case basis considering how far along the probationary period is, required training remaining, how the employee is progressing and/or the likelihood of retention. Once the employee reaches non-probationary status and until the child is one year old or the one year anniversary of the child's placement for foster care or adoption, the employee may use LWOP or substituted accrued leave equivalent to the –number of hours of FMLA leave used during the probationary year.

Section 4: Sick Leave Related to the Birth of a Child

- A. In accordance with applicable laws and regulations, a birth parent is entitled to use accrued sick leave for their own medical appointments, hospitalization, their period of incapacitation following childbirth, and medical appointments or illness of the infant. Sick leave may be used by the birth parent for the time after birth needed for recovery – usually 6 weeks for a normal vaginal delivery and 8 weeks for a C-section. Depending upon available sick leave balances, a family member is entitled to use sick leave up to a maximum of 12 work weeks (480 hours for a full-time employee) to accompany the birth parent to prenatal appointments, to be with them during their period of hospitalization, and/or to care for them during their incapacitation period. Employees may not use sick leave to bond with or care for a healthy baby.
- B. For purposes of this section, a Family Member is an individual with any of the following relationships to the employee: (1) spouse, and parents thereof; (2) sons and daughters, and spouses thereof; (3) parents, and spouses thereof; (4) brothers and sisters, and spouses thereof; (5) grandparents and grandchildren, and spouses thereof; (6) domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and (7) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Section 5: Sick Leave to Care for a Family Member

An employee is entitled to use a total of 12 weeks of sick leave each leave year to care for a family member with a serious health condition. An employee is entitled to use up to 13 days of the 12 weeks of sick leave for general family care purposes (e.g., to care for a child who has a routine illness, to take a child to medical, dental, or optical appointments or well-baby doctor visits). An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes.

Section 6: Sick Leave for Adoption of a Child

In accordance with applicable laws and regulations, an employee may use accrued sick leave for purposes relating to the adoption of a child. An adoptive parent may use sick leave for any purpose that would allow the adoption to proceed including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any other activities necessary to allow the adoption to proceed. Adoptive parents who voluntarily choose to be absent from work to bond with an adopted child may not use sick leave for this purpose. Parents may use paid parental leave (see Section 6), annual leave, compensatory time, credit hours, or leave without pay for these purposes.

Section 7: Family and Medical Leave Act (FMLA)

In accordance with the provisions of the FMLA, eligible employees on a full-time or part-time schedule who have worked in the Federal Service for at least 12 months (not required to be consecutive and not required to be at the same agency) are entitled to use up to 12 work weeks (480 hours for a full-time employee) of leave without pay for maternity/paternity purposes, to include bonding with the child. Paid parental, annual or sick leave, as appropriate, may be substituted for leave without pay in accordance with Agency policy and this agreement. An employee's entitlement to leave under FMLA for maternity/paternity purposes expires 12 months following the date of birth of a child or placement of a child. Employees must invoke their entitlement to leave under FMLA (i.e., a supervisor or manager may not place an employee on leave under FMLA). Unless the employee is incapacitated at the time, an employee may not ordinarily retroactively invoke FMLA. Please note that paid parental leave is part of FMLA.

Section 8: Paid Parental Leave

In accordance with applicable laws and regulations and Agency policy, full-time and part-time employees who are eligible for FMLA leave are eligible for paid parental leave, which is triggered by the occurrence of a birth or new placement (for adoption or foster care) event. Paid parental leave is limited to 12 weeks and may only be used during the 12-month period beginning on the date of the birth or placement. An employee will be able to use the full amount of paid parental leave (12 weeks) only to the extent that there are 12 weeks of available FMLA unpaid leave granted for a birth or placement of a child during the 12-month period commencing on the date of birth or placement. Employees are not required to use or exhaust annual leave or sick leave before requesting paid parental leave. Prior to using paid parental leave, employees are required to enter into a written agreement to work for the USPTO for 12 weeks after the use of paid parental leave concludes. Employees requesting paid parental leave are

required to complete and submit the Parental Leave Request Form and the Agreement to Complete 12-Week Work Obligation. Failure to complete the 12-week work obligation will result in an employee being required to reimburse the USPTO contributions paid to maintain the employee's health insurance coverage under the Federal Employees Health Benefits (FEHB) Program during the period that paid parental leave was used.

An employee may work paid overtime while also taking PPL, consistent with the provisions of Article 25 Overtime.

Section 9: Voluntary Leave Bank Program (VLBP)

Employees may be eligible for the VLBP if they are a current leave bank member and have exhausted accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Donated leave from the VLBP may be used during a medical emergency, such as complications during pregnancy, incapacitation after delivery, or to care for a child with a medical emergency. Donated leave may not be used to bond with or care for a healthy baby.

Section 10: Voluntary Leave Transfer Program (VLTP)

Employees may be eligible for the VLTP if they have exhausted all accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Employees may only receive leave voluntarily donated by other employees under the VLTP during a medical emergency, such as complications during pregnancy, incapacitation after delivery, or to care for a child with a medical emergency. Donated leave may not be used to bond with or care for a healthy baby.

Section 11: Notice to Supervisor

Employees must request leave, in writing when possible for maternity/paternity reasons, indicating the type of leave and the probable duration, normally at least 30 days in advance or when practical. It is understood that unanticipated medical circumstances and issues may arise during pregnancy that will require an employee to alter their request and not allow 30-day advance notice.

Section 12: Maternity/Paternity Compensatory Time

An employee may earn 160 hours of compensatory time under the USPTO maternity/paternity policy before the baby is born or placed that may be used after the

baby is born or placed. Up to 160 hours may be carried over from biweek to biweek for maternity/paternity purposes. This includes 80 hours of compensatory time, and 80 hours of maternity/paternity compensatory time. An employee may continue to earn and use additional hours of maternity/paternity compensatory time after the baby is born or placed for the first 6 months after the birth or placement.

Section 13: Rest periods

Medical rest periods are permitted during pregnancy. Rest periods must be prescribed by a medical authority and are taken as administrative leave. See Article 31, Administrative Leave.

ARTICLE 31

ADMINISTRATIVE LEAVE AND OTHER LEAVE

Section 1

- A. When it is necessary to close the Office because of inclement weather or an emergency situation (e.g., heavy snow, severe icing conditions, flood, earthquake, hurricane, major fire, bomb threats or massive power failures) employees who do not have a signed telework agreement will be granted administrative leave. In the event of an early dismissal, employees on a fixed schedule participating in the partial telework program will be granted administrative leave for the time it takes them to travel to their alternate worksite to continue working. Employees on a flexible work schedule are expected to telework the rest of the day, and will not receive administrative leave for travel time. In the event an employee with a signed telework agreement is unable to telework due to a weather-related issue at their alternate worksite (e.g. power or internet outage), they will be granted administrative leave for the remainder of their day.

Section 2

- A. The Office and the Association jointly encourage employees to donate blood (including whole blood and platelet donation). Participation shall be strictly voluntary.
- B. An employee's supervisor shall grant an employee four hours administrative time to make a blood donation during duty hours, including recuperation and travel time. The administrative time shall be taken consecutively, beginning at the time the employee departs to make the blood donation. The donation may be made at a USPTO or other facility.
- C. Employees will be released to donate blood unless the employee's absence will create a significant work detriment to the work load of the Office.

Section 3

Federal regulations and agency policy allows employees to claim administrative leave of up to 4 hours for receiving COVID vaccinations including boosters or combination COVID/influenza vaccinations during duty hours or taking a family member to get such vaccinations.

Section 4

Employees may claim administrative leave for jury duty or for testifying as a witness. An employee who is summoned to testify as a witness in an official capacity on behalf of the Federal government is on official duty, and will not record the time as court leave.

Section 5

Employees may claim up to 4 hours of administrative leave for:

- A. Voting in connection with each Federal general election day. This includes voting on election day or early voting, including by mail.
- B. Each election event at the Federal, State, local (i.e. county and municipal), Tribal and territorial level that does not coincide with a Federal election day. This includes general elections, primary elections and caucuses. Elections at more than one level on the same day will be considered a single election event.
- C. Voting for Federal special Congressional elections not held on the date of a Federal general election.
- D. Serving as a non-partisan poll worker or participating in non-partisan observer activities at the Federal, State, local, Tribal, or territorial level. An employee is limited to 4 hours of administrative leave per leave year for serving as a non-partisan poll worker or observer.

Section 6: Medical rest periods

Medical rest periods may be taken when prescribed by a medical authority. These periods can be recurring, brief absences of up to one hour per day for rest for reasons related to a medical condition (including pregnancy) and are charged to administrative leave. An employee may not work overtime or compensatory time on any day in which administrative leave is used for this purpose. The rest may be taken in the employee's office or at the Health Center or, if a full-time teleworker, at the alternate work site. A healthcare provider must require the rest period (not recommend or advise) and must state that there are medical (or pregnancy) complications. The one hour per day may be split into a plurality of shorter rest periods, if consistent with the prescription.

Section 7: Parental Bereavement Leave

Eligible employees may claim up to 80 hours (prorated for part-time employees) of parental bereavement leave following the death of a qualifying child (a biological,

adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is under age 18 or, if 18 or older, incapable of self-support because of a disability). To be eligible, an employee must have served under a permanent or term appointment for at least one year prior to the qualifying child's death, and provide a self-certification or other documentation (e.g., death certificate) to verify that the leave is being used for bereavement purposes. Parental bereavement leave must be used within 12 months of the date of the child's death, and may be taken intermittently.

Section 8: Administrative leave to take the bar examination

- A. For one time only, bargaining unit members may be granted up to three days of excused absence to take the bar examination. Request for excused absence must be submitted to the Personnel Officer for approval.
- B. Additionally, up to two days (16 hours) of excused absence may also be authorized for any required interviews before Admissions Committees of the bar involved and the like, and the time so spent may include travel time as in the above cases.

However, in all the above cases, travel time should be performed on non-duty time.

Excused absence may be authorized only for necessary travel time and for the days during which the examination is administered. For example, if an employee lives in Virginia and travels to Colorado to sit the bar exam, the travel time from Virginia to Colorado will not be granted administrative leave.

Excused absence will not be authorized for time taken for personal purposes on the way to or returning from taking the bar examination. Annual leave or leave without pay must be used for such purposes.

No excused absence is authorized for studying for the examination or for taking preparatory courses. Nor is any excused absence permitted for admission to a bar when the employee is already a member of another bar, nor, for admission to any other courts such as the Court of Claims.

Section 9: Administrative leave for Employee Assistance Program

Employees may claim administrative leave for time spent participating in the USPTO's Employee Assistance Program (EAP) for problem identification and referral to an outside resource, and for general employee orientation or education activities.

Section 10: Administrative Leave for Agency-approved volunteer activities

Employees may be granted administrative leave for participating in volunteer activities

so long as the employee's absence is not specifically prohibited by law and satisfies one or more of the following criteria:

- A. the absence is directly related to the department or agency's mission;
- B. the absence is officially sponsored or sanctioned by the head of the department or agency;
- C. the absence will clearly enhance the professional development or skills of the employee in his or her current position; or
- D. the absence is brief and is determined to be in the interest of the agency.

Section 11: Bone Marrow or Organ Donor Leave

An employee may use up to 7 days of paid leave each calendar year to serve as a bone-marrow donor. An employee also may use up to 30 days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave.

ARTICLE 32

LEAVE WITHOUT PAY (LWOP) AND FAMILY MEDICAL LEAVE ACT (FMLA)

Section 1: In General – LWOP

In most circumstances, Leave Without Pay (LWOP) is not an entitlement, however, an employee who desires leave but does not have an adequate leave balance in the appropriate leave category may request leave without pay. Requests for LWOP will not be denied solely because of the employee's performance level (e.g. the employee is on a PIP or their year or quarter-to-date performance is less than Fully Successful).

LWOP and FMLA for Maternity/Paternity purposes is covered in Article 30.

Section 2: Purpose

LWOP is a temporary non-pay status and absence from duty. LWOP will only be granted at management discretion, except where provided by law.

- A. LWOP may affect entitlement or eligibility for certain Federal benefits.
- B. LWOP will only be implemented at an employee's request, or unless it is imposed consistent with applicable law and regulation.
- C. LWOP will be administered in accordance with applicable laws and regulations.

Section 3: Requesting Leave Without Pay

Consistent with applicable regulations and this Agreement, an employee who desires to take leave but does not have enough leave in the appropriate leave category to cover the absence may request LWOP. Note, however, that an employee may be approved for LWOP even if they have a small leave balance in the category for which LWOP is being requested plus available non-religious compensatory time or credit hours. Requests for and approval of LWOP shall be made as far in advance as possible and shall be made directly to the employee's immediate supervisor. Requests may be made by email, phone call, voicemail, instant message, verbally or WebTA (or equivalent time sheet).

Section 4: Requests for Leave Without Pay for 30 Days or More

If the employee requests LWOP for 30 days or more, it must be requested in writing and the employee's supervisor must initiate a personnel action request. The request must

include a written statement fully explaining the reasons for the request, and, if the request is made for medical reasons, a statement from the physician indicating the need for the absence and the prognosis of the employee's ability to return to work at the end of the period of LWOP.

Section 5: Family Medical Leave Act (FMLA)

- A. The Family Medical Leave Act (FMLA) created an entitlement, which allows employees to use up to a total of twelve weeks (480 hours) of leave without pay and/or accrued sick or annual leave for their own serious health condition, for the birth of a child, new adoption or fostering of a child, or the care of a spouse, son, daughter, or parent who has a serious health condition. A serious health condition includes such conditions as cancer, heart attacks, strokes, diabetes, clinical depression, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The Agency would need additional medical documentation in order to determine whether the employee, or a family member as listed above, has a serious medical condition that qualifies under the FMLA. Medical documentation is not required for leave to bond with a newborn child or a child placed for adoption or foster care.
- B. If the employee is eligible for FMLA (i.e. has one year of federal service) and wishes to invoke their entitlements under the FMLA, the Agency can immediately provisionally approve a request for leave under the Family Medical Leave Act (FMLA) for up to twelve weeks (480 hours) in a twelve-month period of time, pending the employee's submission of medical documentation that supports either their incapacitation for duty for the period(s) of leave or their family member's serious health condition. The employee does not need to wait until the medical documentation is received to start the leave. If the employee decides to invoke the FMLA, they are required to provide their supervisor with administratively acceptable medical documentation within fifteen days of their invocation and first use of leave under FMLA. If the agency does not find the medical documentation to be sufficient, the employee will be granted fifteen days to submit additional documentation.
- C. The reference to 480 hours is for a full-time employee; the amount is prorated for employees working a part-time schedule.

Section 6: Voluntary Leave Bank Program (VLBP)

Employees may be eligible for the VLBP if they are a current leave bank member and have exhausted accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Donated leave from the VLBP may be used during a medical emergency.

Section 7: Voluntary Leave Transfer Program (VLTP)

Employees may be eligible for the VLTP if they have exhausted all accrued sick leave and annual leave, and they expect to be on LWOP for at least 24 hours. Employees may only receive leave voluntarily donated by other employees under the VLTP during a medical emergency.

Section 8: Sabbaticals

Employees may request sabbaticals (extended LWOP) not to exceed a total of 1 year every 5 years. Such requests will not be unreasonably denied.

ARTICLE 34
REASSIGNMENTS

Section 1: Definition and Scope of Article

- A. A reassignment is a permanent change in an employee's position to another without promotion, demotion, or break in service. This Article covers reassignments from one bargaining unit position to another position within the bargaining unit.
- B. Decisions concerning reassignments may, among other things, take into account the goals of increasing career-related flexibility, mobility, minimizing the need for involuntary reassignment, efficient and effective administration of programs, and staffing levels. Therefore, subsequent anticipated staffing goal and hiring plan adjustments will be addressed in a labor-management committee meeting.
- C. The Agency will only make involuntary reassignments when it determines it is appropriate due to business considerations. The Office recognizes the benefits of maintaining a consistent scope of the art for examiners. Therefore, to the extent consistent with the interests of the Office, every reasonable effort will be made to allow examiners in GS Grade 13 and above to maintain their assigned dockets.

Section 2: Hardship

Any employee who feels a hardship will be created by a reassignment may request and shall be granted a prompt meeting with the manager/supervisor who decided on the reassignment, who will give fair consideration to the employee's concerns.

Section 3: Avoidance of Reductions in Force

Nothing in this Article shall preclude reassignments in lieu of reductions in force (RIF). The Agency will strive to reassign employees to appropriate positions if they are adversely affected by reductions-in-force, downsizing, or other types of displacement.

Section 4: Reducing Impact Due to Reassignment

The Agency agrees to minimize the impact of the reassignment on an individual employee caused by the introduction of new equipment, processes and workload changes including, when necessary, retraining of individual employees adversely affected.

Section 5: Notification to Employees

- A. The Office hereby expresses willingness to consider promptly or reassignments from all members of the Unit. Requests for personnel action will be processed promptly.
- B. Normally, the Agency will inform an employee of a reassignment at least one biweek in advance of the effective date.

Section 6: Agency Initiated Reassignments due to Staffing or Workload Needs

When the Agency determines that a staffing or workload imbalance or other work-related need exists, the Agency may reassign bargaining unit employees from one position to another.

- A. The Agency will identify the position(s) and organization(s), as opposed to employees, from which the employees to be reassigned will come.
- B. In some instances, management may need to reassign the entire group of employees.
- C. In other instances, management may need to reassign one employee or a portion of the group. In these instances, the Agency will:
 - 1. Designate the time in grades of the employees to be reassigned if there is a need to balance experienced employees versus more junior employees.
 - 2. Give priority consideration for vacancies for which the employee is qualified.
 - 3. Consider whether an employee has recently been reassigned, and whether reassignment will return the employee to a conflict (personal or financial) from which the employee was removed. If reassignment occurs in this situation, the employee has the right to request a transfer under Article X (Voluntary Transfer). For example, if an examiner was transferred away from a supervisor due to a personality conflict, returning that employee to that same supervisor would again create the prior conflict.
 - 4. When management has determined that a group of employees are equally appropriate for a reassignment, management will ask for volunteers from these employees and determine which employees to reassign. Consideration may be based on qualifications, grade level, seniority, or other appropriate factors. If there are too many volunteers, the employees with the oldest PTO service computation date shall be given first consideration for the reassignment. If there are too few volunteers, employees with the most recent PTO service computation date will be given first consideration for the reassignment.

Section 8: Other Agency Initiated Reassignments

Based on issues specific to an employee, the Agency may reassign employees for reasons such as reducing the likelihood of interaction between employees or avoiding the appearance of impropriety. These reassignments may be made immediately, without prior notice.

Section 9: Suspension of Reassignment

Permanent reassignment, or transfer, of an employee shall be suspended, pending the resolution, through the negotiated grievance procedure, of all grievances and equal employment opportunity complaints regarding the transfer.

ARTICLE 35

REDUCTIONS-IN-FORCE

Section 1

Reduction-In-Force (RIF) shall be governed by 5 C.F.R. Part 351 and the provisions of this Article.

Section 2

The Office, whenever practical, shall avoid RIF actions by utilizing attrition and/or other means that will not interfere with the accomplishment of the Office's mission. Implementation of a RIF shall be a last resort.

Section 3

- A. The Office will counsel and assist employees, for whom no acceptable position can be provided, regarding early retirement and/or preparing resumes, holding job interviews, and other techniques of gaining acceptable employment.
- B. Counseling and assistance shall be conducted on official time.
- C. When more than fifteen (15) employees are to be released over a two-month period, the Office will invite suitable employers for a job fair.

Section 4

- A. To facilitate impact and implementation negotiation, the Office will inform the Association of any pending RIF, as soon as possible, but not less than 30 days prior to official notification of the employees.
- B. The Office shall inform the Association by written notice, which shall include the reasons for the RIF, the number and types of positions affected, and the approximate date of the action. A copy of the retention register shall be made available for inspection by the Association.
- C. The Office will meet with the Association to explain the RIF procedure and answer any questions.

Section 5

- A. After receiving written notice of the RIF, the Association shall have the right to negotiate on the impact and implementation of the impending RIF.
- B. Negotiations will be conducted in accordance with this Agreement's provisions for mid-term negotiations and shall be limited to proposals not inconsistent with this Article.

Section 6

The Office shall not institute a RIF as a disciplinary measure against an employee or group of employees.

Section 7

- A. Upon notification to the Association of an impending RIF, the Office will impose a hiring freeze on positions within the competitive level of the affected employees.
- B. The hiring freeze will stay in effect until all affected employees have retired and/or are placed in positions having the same representative rate as their current positions but, in no event shall it stay in effect for more than one year.

Section 8

- A. The Office shall maintain the records needed to accurately determine the retention standing of employees.
- B. Upon request, the Office will timely provide the Association with copies of records relevant to a proposed separation or assignment to a lower grade level position.

Section 9

For all members of the Unit, the minimum competitive area is the entire U.S. Patent and Trademark Office.

Section 10

- A. A competitive level shall be consistent with the regulatory definition of competitive level.
- B. If the Association provides, in writing, reasons for including additional positions

within a particular competitive level, the Office shall either include these positions or provide substantive written justification for excluding them.

Section 11

- A. When an employee is to be released from a competitive level, the Office will provide the employee with a list of all positions within the bargaining unit for which the employee is at least minimally qualified.
- B. The employee will be given thirty (30) days to accept or refuse the first offered assignment and ten (10) days to accept or refuse any subsequent offered assignment which is less severe than the first assignment.

Section 12

Specific notice of release from a competitive level, as defined in 5 C.F.R. 351.802, shall be given to the employee at least 30 days before the effective date of release.

Section 13

- A. When a specific position from which an employee has been demoted by a RIF action becomes vacant and is being filled, the demoted employee will be considered for repromotion noncompetitively to the position subject to subsection B below.
- B. An unsatisfactory performance rating which is documented in the employee's Official Personnel File, or a failure to achieve an acceptable level of competence either before or after demotion by a RIF action shall be bases for nonpromotion.
- C. If more than one employee meets the criteria of subsection A and is not subject to the criteria of subsection B, the employee who possessed the highest retention standing at the time of demotion will be promoted.
- D. All employees previously demoted without personal cause, misconduct or inefficiency, will receive special consideration for repromotion.

ARTICLE 36

OFFICE SPACE AND PHYSICAL FACILITIES AT ALEXANDRIA HEADQUARTERS

Section 1

- A. All bargaining unit members GS-13 and above will be provided with private, wall-enclosed (full ceiling height) offices of approximately 150 square feet within a reasonable amount of time after the employee achieves grade GS-13. Each professional grade GS-12 or below will be provided with a private, wall-enclosed (full ceiling height) office of approximately 150 square feet whenever possible.
- B. If there are situations where a private, wall-enclosed (full ceiling height) office is not possible for an employee grade GS-12 or below, then professionals sharing office space with other professionals will be located in wall-enclosed (full ceiling height) offices with the smallest number of additional professionals feasible and provided with approximately 150 square feet, where possible, for their own working area.
- C. The Agency will attempt to lessen the adverse impact of increased noise on the production of professionals sharing offices by: (1) providing movable, acoustical wall partitions for each of these offices, unless the professionals sharing an office do not want partitions and (2) having the supervisor, after they are informed of a valid complaint (e.g., one affecting the professionals' productivity), temporarily reassign or allow reasonable non-production time to the affected professional (i.e., the professional making the complaint), when one of the professionals sharing the office performs required work activities (e.g., examiner interview, classification project meetings, post classification disputes) creating disturbances that do not allow the affected professional, who shares this office, to maintain necessary concentration.
- D. Except for subsections 1E and 3E, the rights and obligations set forth in Sections 1-3 do not apply to temporary redistributions of space for less than 60 days.
- E. The Agency is cognizant of its responsibilities to work towards the goal of identifying and removing barriers to employees with disabilities. Nothing in this section may prevent the Agency from granting a private office as a reasonable accommodation for an employee with a disability. When this occurs, the Union will be notified.

Section 2

The arbitration decision of Jerome H. Ross in 83 FSIP 89, shall be incorporated into this agreement without change and is set forth in Appendix X.

Section 3

- A. The Agency agrees that inadequate ventilation, filtration, heating, cooling and lighting in areas of the Office, in which members of the Unit work, contribute to inefficiency and further agrees to seek and request installation of adequate facilities to provide such ventilation, filtration, heating, cooling and lighting where it does not exist. In the event of failure of the air conditioning system, heating or lighting facilities, the Office agrees that those employees present may be excused from duty with no loss of leave or salary. (Failure of the air conditioning system will be defined as any continuous period greater than four hours in which the employee's office temperature is greater than 87°F. Failure of the heating facilities will be defined as any continuous four-hour period in which the employee's office temperature is below 60°F.)
- B. Each office will contain adequate controlled lighting, ventilation with proper dust filtration system, and heating, cooling and electrical outlets.
- C. Each EIC will be provided with lighting at a level which allows the reading of the documents within their search area.
- D. Employees with an onsite detail will be provided with a quiet, individual work space having adequate lighting, ventilation, filtration, heating and cooling.
- E. Smoking and vaping are prohibited indoors and outdoors, including garages except where smoking receptacles are placed:
 - 1. under north canopies outside Randolph, Remsen, Knox and Jefferson buildings,
 - 2. in front of the East and West wings of the Madison Building adjacent to sitting benches, and
 - 3. four specific locations in Dulany Gardens.

Section 4

- A. Each professional's office or work area will be provided with telephony.
- B. The Agency will continue to provide a 24-hour per day security system for all work areas utilized by the professional staff. The PTO will provide access for authorized professionals to their designated work areas at all times (i.e., 24 hours per day). Lockable doors will be provided for either each individual office or work area.
- C. As necessary, a reasonable amount of non-production time will be granted to employees required travel from their own office space to another building to perform their job duties, for training, or to interact in person with the Security Services Center, Employee Relations, Labor Relations, or the Office of Human Resources.
- D. The Agency agrees to normally deliver all written information or actions that affect either the production, rating, pay, promotions or services provided to professional personnel in a timely manner. Turn-around time periods shall start when the work is received by the professionals.

Section 5

- A. During a move, or during maintenance involving temporary or permanent relocation of office furniture, each affected professional will be allowed non-production time for boxing and unboxing, labeling of boxes, paperwork (including electronic forms) pertaining to the move, and the preparation, implementation and the reorganization of their office due to either a modification of, or a transfer to or from, their office area, subject to later review by the supervisor.
- B. All supervisors shall encourage accurate recording of time spent packing and unpacking offices. There will be no arbitrary uniform rules about the amount of time that can be spent packing and unpacking. Employees will engage in a reasonably good faith effort to diligently pack and unpack their offices. Any time used because a professional being moved decides that this is an appropriate occasion to determine which items to discard or retain is not envisioned as caused by the move.
- C. No professional will be assigned or reassigned to office space until such time as that office space is substantially ready for occupancy in accordance with Sections 1, 2, 3 and 4 of this Article.

- D. When multiple employees are being relocated, seniority will be used to determine window office assignments.
- E. Priority shall be determined by: the grade of the employee; then by the degree of permanent or temporary signatory authority (for patent examiners); the amount of time served in the employee's current and previous higher grades (as in the case of employees with prior federal service); and finally, the length of service at the USPTO.
- F. Nothing in this section may prevent the Agency from granting a window office as a reasonable accommodation for an employee with a disability.

Section 6

For facilities issues, employees may contact 571-272-2000 (X2-2000) or facilitieshelpdesk@uspto.gov, or subsequent contact information.

Section 7

- A. USPTO employees shall have priority in access to the East and West Parking Garages, including priority for purchasing monthly parking permits (if limited) and priority for daily parking (if nearing capacity).
- B. USPTO employees will have access to bicycle racks and/or storage.
- C. Employees will have access to pantries in their work areas. Pantries shall include at least the following: full-size refrigerator, sink/disposal, microwave, counter space, cabinets, and hot water.

Section 8

- A. The Office and the Association agree that clean, well-maintained areas in which members of the Unit work contribute to the efficiency of the operation. In this regard, the Office agrees to diligently enforce the lease requirements regarding the painting and cleaning of such areas.

- B. To permit social distancing, offices will be cleaned, and common areas (including pantries) will be disinfected, on a predictable daily schedule. Refrigerators and microwaves in pantries will be cleaned weekly on Fridays.
- C. To prevent distraction from noises and smells, offices will be painted at night and on weekends, when practical. For at least one full biweek after any room or area is painted, employees assigned to offices within an envelope bounded by the floor above and the floor below the painted area will be offered additional telework hours or temporary access to hoteling space. Employees within the envelope who do not have a signed telework agreement will be offered temporary access to hoteling space.
- D. The Agency shall ensure that each building meets or exceeds environmental safety standards, and will be managed in accordance with all regulatory requirements.

Section 9

- A. The Agency will periodically offer all bargaining unit members, including teleworkers, an ergonomic, height adjustable desk, and an ergonomically healthful chair in which to work.
- B. The Agency will periodically offer a lockable container or file cabinet.

Section 10

Professionals shall be permitted freedom of expression in decorating their office or work area. Only unsafe decorations, decorations which create a hostile work environment, and decorations which constitute visual conduct violating USPTO's Anti-Harassment Policy, will be prohibited.

Section 11

Six months after the completion of any move of at least one examining group or its equivalent, the parties will meet to consider any adverse effect(s) of the move and together make a bona fide attempt to solve such problem(s), if any.

ARTICLE 37

REGIONAL OFFICES

Section 1

All policies and practices that apply to bargain unit employees who report to the USPTO Alexandria Headquarters will also apply to the bargaining unit employees who report to the Regional Offices to the extent not inconsistent with location-specific practices noted in this article.

Section 2

- A. To the extent it is feasible, automated systems and collaboration tools used by examiners in the Regional Offices will be equivalent to those used by examiners at the Alexandria Headquarters.
- B. Although Regional Offices may have fewer on-site technicians than Alexandria HQ, the Agency will offer a similar level of technical support regardless of location.

Section 3

- A. Work schedule times, including core hours, and HVAC hours, will be local times based upon the location of each employee's actual worksite. All other times, unless otherwise specified in an agreement, will be Eastern Time.
- B. Action counting, docket management, STIC and EIC hours (including translation services), ITRP hours, Service Desk hours, and OCIO maintenance times will apply to the Regional Office employees using Eastern Time.

Section 4

- A. POPA bargaining unit employees may use their security badges to enter any Regional Office, regardless whether the employee reports to that Regional Office. Employees will have 24 hour access to all USPTO-occupied areas of each Regional Office, to the extent this can be controlled by USPTO, except for areas that are normally restricted.
- B. Emergencies: Dialing 911 connects to USPTO security command in Alexandria, VA, who may contact local support. Dialing 9-911 contacts local police.
- C. Non-emergencies

1. Between 7:30AM and 5:30PM weekdays (local time), employees in Regional Offices may contact their local USPTO security officers.
2. At any hour, dialing 2-7800 connects to USPTO security command center in Alexandria, VA.

Section 5

The Federal Holiday schedule for the Regional Offices will be the same as the USPTO Alexandria Headquarters, except for holidays that are specific to the Washington, DC area, such as Inauguration Day.

Section 6

- A. The Agency will pay the Association travel expenses and per diem for all Association visits to Regional Offices per year, for two travelers per visit, up to the maximum number of visits. The maximum number of visits is calculated by doubling the number of Regional Offices. For example, the current number of Regional Offices is 4, and $2 \times 4 = 8$, so the maximum number of Association visits to be paid by the Agency is 8 visits. The Agency will not pay for any additional Association visits, or any additional travelers per Association visit. The identity of the traveler, and the Regional Office visited, are at the discretion of the Association. Association visits are for the purpose of conducting representational activity. The duration of travel for the Association visit will be limited to what is reasonable to complete the representational activity.
- B. When requesting paid travel for an Association visit, the requestor will request appropriate space in the Regional Office for the traveler to engage in private consultations with bargaining unit employee(s), and to access collaboration tools with the requestor/traveler's UL. The Agency will provide badges and keys, as necessary, for the requestor/traveler to access to the Regional Office and the appropriate space.
- C. The Agency shall provide at least one lockable bulletin board per pantry on floors with offices assigned to full-time bargaining unit employees. At least one half of one lockable bulletin board per pantry is for POPA's use. The Agency may use the other half of the lockable bulletin board, or an additional lockable bulletin board, to display EEO and other notices and postings.
- D. POPA may use all video conferencing and other collaboration tools for representational activities, including but not limited to, association conferences, annual meetings and grievance meetings, meetings associated with proposed

adverse actions or proposed disciplinary actions, adverse actions, disciplinary actions and investigatory meetings; however, if a POPA representative prefers for these activities to occur in person, requests for in-person meetings will not be unreasonably denied.

- E. Video and audio communications between POPA and its bargaining unit member(s), or between POPA and the Agency, or between the Agency and its employee(s), shall not be recorded by either party without the express knowledge and consent of all parties to the communication. All parties must be identified (i.e., no secret listeners).

Section 7

Employees teleworking far from Alexandria HQ may request to telework from a Regional Office if there is a weather event or other emergency that prevents the employee from working at an approved alternate work site. When possible under the circumstances, the request should be made in advance.

Section 8

Relocations from one Regional Office to another, or between a Regional Office and the Alexandria HQ (or within 50 miles of these locations), or between a telework site and a USPTO office, will be handled in accordance with the Agreement on Examiner Transfers Between Offices.

Section 9

If the Agency decides to close a Regional Office, the parties will follow the procedures set out in the Permanent Closure of a Satellite Office agreement, with the understanding that the term "Satellite Office" as used in that agreement is synonymous with "Regional Office" as used in this CBA.

ARTICLE 38

ACQUISITION OF NEW SPACE

Section 1

The parties recognize that the Madison, Knox, Jefferson, Remsen, and Randolph buildings have a uniform office size of approximately 150 sq. ft. No part of these buildings shall be remodeled by USPTO to deviate from this uniform office size while these buildings are under USPTO control. If any of these buildings is relinquished from USPTO's control, and subsequently remodeled by the landlord or by another leaseholder, such a building will not be reacquired by USPTO unless and until office sizes measure 150 sq. ft. or larger.

Section 2

The Agency will consider transportation issues (such as location proximity to a major highway, parking, access via public transportation systems and airports) when acquiring new space. The Agency will consider other factors such as: environmental impact; accessibility to persons with disabilities; economic justice and equity; current cost and projected cost estimates; access to courthouses, law libraries, law schools, and universities; proximity to significant numbers of USPTO customers; number and variety of restaurants; cost, value, and variety of nearby housing; quality and capacity of public and private schools in the surrounding communities; access to shopping; crime statistics in the surrounding area; availability of parking for staff and the general public; walkability, including sidewalks, underground pedestrian walkways, and trails; bicycle access; and other amenities in the area of the proposed location.

Section 3

Regardless whether newly acquired space is pre-built or built to the Agency's order, the parties will meet to discuss lighting throughout the newly acquired space.

Section 4

The Agency shall ensure that each building meets or exceeds environmental safety standards, and will be managed in accordance with all regulatory requirements applicable to the jurisdiction in which each building is located. If these requirements exceed the environmental safety standards applicable to Alexandria HQ or to any Regional Office, the parties will meet to establish a plan to increase the environmental

safety of the Alexandria HQ and/or Regional Office to meet the environmental safety standards achieved for the new space, to the extent such an increase would not violate state laws and regulations applicable in the corresponding jurisdictions.

Section 5

To maximize window offices and natural lighting in offices, the Agency will locate copy centers, service centers, pantries, conference rooms, interview rooms, collaboration rooms, training classrooms, and other shared spaces away from exterior walls, and will use exterior walls with windows to locate as many 150 sq. ft. private offices as possible.

Section 6

The Agency and the Association agree that clean, well-maintained areas in which members of the Association work contribute to the efficiency of the operation. In this regard, the Office agrees to establish lease requirements regarding the painting and cleaning of any newly-acquired space and regular maintenance of those facilities such as repainting and recarpeting.

ARTICLE 39

REPRODUCTION AND DISTRIBUTION OF THE AGREEMENT

1. The Office will make electronic copies of the Agreement available to all unit supervisors, management officials, and bargaining unit employees. The electronic copy will enable users to search by article and section, including a table of contents that links to the articles. When the Agreement becomes effective, the Agency will notify all bargaining unit employees of the location of the Agreement on the Agency intranet or a similar means of accessing the agreement.
2. The Agency will maintain a copy of the Agreement on the Agency's intranet site, or equivalent.
3. The Agency will provide the Association with a version of the Agreement that the Association can post electronically.
4. Version control will be maintained over electronic copies of the Agreement including date of the version.
5. The Chief Negotiators shall arrange for printing of a mutually agreeable number of hard copies at a mutually agreeable cost. The number of hard copies will be at least the number of members of the Association's executive committee (officers and delegates). The cost shall be shared equally by the Office and the Association. The printing will be done as expeditiously as possible.

ARTICLE 40
DURATION AND AMENDMENT

Section 1

- A. Except as provided in this Article, this Agreement shall remain in full force and effect for a four year period and its initial term shall be extended for additional one year periods, unless written notice of intent to terminate is given to the other party in accordance with Section IB below.
- B. The notice of intent to terminate shall be given no sooner than 180 days before the termination date and not less than 120 days before the termination date. Once notice is given, the moving party must submit its proposals to the other party not less than 120 calendar days before the termination date. The party receiving the proposals may submit counterproposals and/or proposals to the other party during the next 45 day period. The parties shall begin negotiations no later than 70 days prior to the termination date. This Agreement will remain in full force and effect until the implementation of a new basic agreement.

Section 2

Except as provided in Article 2, Section 2, this Agreement may be reopened for amendment at any time by mutual consent of the parties. Any request for amendment shall be in writing and must be accompanied by proposed amendments or modifications(s). Within 30 days after a request has been received, the party receiving the request will indicate either willingness or refusal to negotiate. If the consent is obtained or if a request has been made under Article 2, Section 2, negotiations will commence in accordance with Article 14, Section 3B. Only those changes accompanying the request shall be considered unless the parties agree otherwise.

Section 3

For all matters arising prior to the effective date of the appropriate provisions of this Agreement, the provisions governing the resolution of the matter shall be those of the parties' prior Agreement.

ARTICLE A
DISCIPLINARY AND ADVERSE ACTIONS BASED ON CONDUCT

Section 1

The parties agree that primary emphasis should be placed on preventing situations that may result in disciplinary or adverse actions and that an employee may be more effectively helped through counseling (including providing information about work-life benefits and programs), training, and mentoring, rather than through a disciplinary or adverse action.

Section 2

A disciplinary action for the purpose of this Article is defined as a letter of reprimand, or a suspension of 14 days or less.

Section 3

An Adverse Action for the purpose of this Article is defined as a removal, a suspension for more than 14 days, a reduction-in-grade, a reduction in pay for conduct. This Article does not apply to discharges during probationary, or trial periods or termination of temporary appointments.

Section 4

The employee and their representative, if applicable, shall receive all evidence relied upon by the Agency in proposing any disciplinary or adverse action. The Agency shall also provide the employee, all evidence that is favorable to the employee and related to the reasons for the proposed action. After a disciplinary or adverse action has been proposed, any new evidence that will amend or create a new allegation or reason for the proposed action, will require a new proposed action, if such evidence is to be relied upon by the Agency. If the Agency is to rely upon any other evidence after proposing a disciplinary or adverse action, the employee and their representative will be provided an opportunity to respond to such new evidence.

Section 5

Where the Agency has relied upon witnesses to support the reasons for the proposed action, the Agency will make those witnesses available, to the extent it has control over them, for the employee or their representative to question.

Section 6

Any disciplinary or adverse action may be grieved pursuant to the terms of Article 12 of this Agreement

Section 7

When the Agency proposes to suspend an employee for 14 days or less the following procedures will apply:

- A. The Agency will provide the employee with 15 days advance written notice of the proposed disciplinary action;
- B. The advanced written notice of proposed disciplinary action shall include all the reasons for the proposed action, a statement that the employee has a right to a representative, and the right to respond orally and/or in writing. A request for an oral reply must be made to the deciding official within 10 days from the date the employee receives the notice. A request for an oral reply must be made in writing. A reasonable request for an extension will be granted.
- C. The documentary evidence on which the notice of proposed disciplinary action is based will be assembled, copied and given to the employee at the time the notice is delivered.
- D. Where an employee chooses to make an oral reply, the reply will be heard by a higher level management official than the official who issued the notice of proposed disciplinary action. The Agency will record the oral reply, prepare a summary and provide a copy of the summary to the employee or his/her representative. The

employee may make corrections to the summary. Any dispute over errors/corrections shall be verified by the recording of the oral reply.

- E. The oral reply affords the employee a forum to present an uninhibited oral defense, including denial of reasons for the proposed action, a presentation of any mitigating circumstances and a request for less severe action. It is not a hearing. Although questions may be asked for clarification, there is no cross examination or presentation of witnesses. In delivering an oral reply, the employee may make any representation they believe might influence the final decision. The oral/written reply shall be made a permanent part of the documentary evidence upon which the proposed action is based and shall be submitted to the deciding official.

- F. A letter of final decision containing the Agency's detailed findings with respect to each reason upon which the proposed action was based, and the appropriate appeal rights, will be issued and delivered to the employee at the earliest date possible after the oral reply or the receipt of the written reply or the termination of the 15 day period. However, in no instance shall this time be greater than 60 days from the employee's response.

Section 8

A suspension of 14 days or less will be grieved at the level of the deciding official. Thereafter, all requirements associated with subsequent steps of the grievance procedure will apply.

Section 9

When the Agency proposes an adverse action against an employee, the following procedures will apply:

- A. The Agency will provide the employee with 30 days advance written notice of the proposed adverse action;

- B. The advanced written notice of proposed adverse action shall include all the reasons for the proposed action, a statement that the employee has a right to a representative, identification of the person who will decide on the proposed action (i.e. the deciding official), contact information provided by the Union, the right to respond orally and/or in writing. A request for an oral reply must be made within 15 days from the date they received the notice. A request for an oral reply must be made in writing. A reasonable request for an extension will be granted.
- C. The documentary evidence on which the notice of proposed adverse action is based will be assembled, copied and given to the employee at the time the notice is delivered. If the documentary evidence is submitted at a date later than the notice, the latter date the documentary evidence is delivered to the employee will be the notice date.
- D. The reply will be heard or read in the case of a written reply, and considered by a higher level management official than the official who issued the notice of proposed adverse action. The higher level management official will be outside the chain of command of the employee and the proposing official. For an oral reply, the Office will record the oral reply, prepare a summary, and provide a copy of the summary to the employee and their representative (if applicable). The employee may make corrections to the summary. Any dispute over errors/corrections shall be verified by the recording of the oral reply.
- E. The oral reply affords the employee a forum to present an uninhibited oral defense, including denial of reasons for the proposed action, a presentation of any mitigating circumstances and a request for less severe action. The oral reply is not a hearing. Although questions may be asked for clarification, there is no cross examination or presentation of witnesses. In delivering an oral reply, the employee (or via their representative) may make any representation they believe might influence the final decision. The oral or written reply shall be made a permanent part of the documentary evidence upon which the proposed action is based and shall be submitted to the deciding official.
- F. A letter of final decision containing the Office's detailed findings with respect to each reason upon which the proposed action was based, and the appropriate appeal rights, will be issued and delivered to the employee at the earliest date possible after the oral reply or the receipt of the written reply.

- A. After receiving a notification of action to reduce in grade or remove, the employee will be given an opportunity to resign or, if eligible, to retire. A clean resignation may be considered. This notice will occur at least five (5) weekdays before the effective date of the reduction in grade or removal, and the employee will be able to resign or retire until 5:00 pm Eastern Time on the effective date stated in the notice. The employee must submit the appropriate paperwork or application before the effective date of the action. They will be advised of all rights and benefits to which the employee may be entitled, including but not limited to, retirement, annuity, or health insurance.

- B. If an action for removal is canceled or rescinded, all official documents related to the action that are contained in the employee's USPTO personal file and/or the eOPF will be purged.

Section 11

Adverse actions may be appealed either directly to the Merit Systems Protection Board (MSPB) or, with the consent of the Association, to arbitration under Article 11 of this Agreement, but not both. Employees shall be warned in writing that once an election to appeal is made, it is final and irrevocable.

Section 12

If an employee elects to appeal an adverse action to arbitration, and the Association consents, the Association must give the Office notice of its decision within 15 days after the employee receives the Office's final decision.

Section 13

Information: The Union will be provided quarterly data regarding the number of proposals issued in each Technology Center and business area:

- removals based on conduct
- suspensions of 1-14 days
- suspensions of 14+ days
- letters of reprimand

Section 14: Ban and Bar

- POPA will be notified as soon as possible if a bargaining unit member is banned and barred.
- The ban and bar notice will specifically describe the basis for the ban and bar, what the employee is banned from, and what the employee is barred from, and the expiration date of the ban and bar
- An employee subject to a ban and bar will be notified by appropriate means.
- If an employee is banned and barred from using government equipment to perform their job duties, the employee will be placed on administrative leave pending resolution of the ban and bar.
- If the employee is banned from office resources to complete a work duty, that work duty will be excused, or the agency will provide an alternative
- The employee will be notified 7 days prior to the expiration of the ban and bar.
- The resolution of the investigation during the ban and bar will be communicated, by appropriate means, to the employee as soon as possible. For example, if an employee has been banned from using agency equipment, work email would not be an appropriate means of communicating to the employee. If an employee is ban and barred from communicating, contacting, or coming within a certain distance of employee A, employee A will be notified.
- The resolution of the investigation during the ban and bar will be communicated to employee A as soon as possible.
- An employee under a ban and bar will be placed on administrative leave.

ARTICLE B
ADVERSE ACTIONS BASED ON PERFORMANCE

Section 1

The parties agree that primary emphasis should be placed on preventing situations that may result in adverse actions based on performance and that an employee may be more effectively helped through counseling (including providing information about work-life benefits and programs), training, and mentoring, rather than through an adverse action.

Section 2

An Adverse Action for the purpose of this Article is defined as a removal based on performance or a furlough of 30 days or less for non-conduct reasons. This Article does not apply to discharges during probationary, or trial periods or termination of temporary appointments.

Section 3

The employee and their representative, if applicable, shall receive all evidence relied upon by the Agency in proposing any adverse action. The Agency shall also provide the employee, all evidence that is favorable to the employee and related to the reasons for the proposed action. After an adverse action has been proposed, any new evidence that will amend or create a new allegation or reason for the proposed action, will require a new proposed action, if such evidence is to be relied upon by the Agency. If the Agency is to rely upon any other evidence after proposing an adverse action, the employee and their representative will be provided an opportunity to respond to such new evidence.

Section 4

Where the Agency has relied upon witnesses to support the reasons for the proposed action, the Agency will make those witnesses available, to the extent it has control over them, for the employee or their representative to question.

Section 5

Oral and written warning performance improvement periods, and adverse actions may be grieved pursuant to the terms of Article 12 of this Agreement.

Section 6

When the Agency proposes an adverse action against an employee, the following procedures will apply:

- A. The Agency will provide the employee with 30 days advance written notice of the proposed adverse action.
- B. The advanced written notice of proposed adverse action shall include all the reasons for the proposed action, a statement that the employee has a right to a representative, identification of the person who will decide on the proposed action (i.e. the deciding official), contact information provided by the Union, the right to respond orally and/or in writing, A request for an oral reply must be made within 15 days from the date they received the notice. A request for an oral reply must be made in writing. An email request is acceptable. A reasonable request for an extension will be granted
- C. The documentary evidence on which the notice of proposed adverse action is based will be assembled, copied and given to the employee at the time the notice is delivered. If the documentary evidence is submitted at a date later than the notice, the latter date the documentary evidence is delivered to the employee will be the notice date.
- D. The reply will be heard or read in the case of a written reply, and considered by a higher level management official than the official who issued the notice of proposed adverse action. The higher level management official will be outside the chain of command of the employee and the proposing official. For an oral reply, the Office will record the oral reply, prepare a summary, and provide a copy of the summary to the employee and their representative (if applicable). The employee may make corrections to the summary. Any dispute over errors/corrections shall be verified by the recording of the oral reply.

- E. The oral reply affords the employee a forum to present an uninhibited oral defense, including denial of reasons for the proposed action, a presentation of any mitigating circumstances and a request for less severe action. The oral reply is not a hearing. Although questions may be asked for clarification, there is no cross examination or presentation of witnesses. In delivering an oral reply, the employee (or via their representative) may make any representation they believe might influence the final decision. The oral or written reply shall be made a permanent part of the documentary evidence upon which the proposed action is based and shall be submitted to the deciding official.

- F. A letter of final decision containing the Office's detailed findings with respect to each reason upon which the proposed action was based, and the appropriate appeal rights, will be issued and delivered to the employee at the earliest date possible after the oral reply or the receipt of the written reply.

Section 7

- A. When appropriate, the Office will consider proposing a reducing the grade of an employee who does not successfully complete a PIP or maintenance period prior to proposing their removal.

- B. After receiving a notification of action to reduce in grade or remove, the employee will be given an opportunity to resign or, if eligible, to retire. This notice will occur at least five (5) weekdays before the effective date of the reduction in grade or removal, and the employee will be able to resign or retire until 5:00 pm Eastern Time on the effective date stated in the notice. The employee must submit the appropriate paperwork or application. They will be advised of all rights and benefits to which the employee may be entitled, including but not limited to, retirement, annuity, or health insurance.

- C. If an action for unacceptable performance is canceled or rescinded, all official documents related to the action that are contained in the employee's USPTO personal file and/or the eOPF will be purged.

Section 8

Adverse actions may be appealed either directly to the Merit Systems Protection Board (MSPB) or, with the consent of the Association, to arbitration under Article 11 of this Agreement, but not both. Employees shall be warned in writing that once an election to appeal is made, it is final and irrevocable.

Section 9

If an employee elects to appeal an adverse action to arbitration, and the Association consents, the Association must give the Office notice of its decision within 15 days after the employee receives the Office's final decision.

Section 10

The Union will be provided quarterly data for each TC and non-patents business unit with covered employees regarding the number of:

- Proposed removals based on performance
- oral warnings
- written warnings
- removals based on performance
- abeyance agreements

ARTICLE C
PERFORMANCE MANAGEMENT

Section 1

- A. The parties agree that primary emphasis should be placed on preventing situations that may result in placing an employee on an oral warning or performance improvement period (PIP), and that employees may be more effectively helped through counseling (including providing information about worklife benefits and programs), transfer to a new trainer or supervisor, training, coaching and mentoring, rather than through an oral warning or PIP.
- B. Prior to placing an employee on an oral warning or PIP, the Agency will
1. Consider the employee's known medical issues or the known medical issues of the employee's family, any known hardships or stressors in the employee's life, any actions taken by the employee to improve performance, and prior successful performance;
 2. Inform the employee of work-life benefits and programs that could help maintain their performance, including how participating in those benefits and programs may help maintain their performance. A written summary of the information will be provided; and
 3. Inform the employee of the consequences of being placed on an oral warning and PIP and unsuccessfully completing the oral warning and PIP.
- C. The Agency may waive application of an oral warning or PIP based on the above considerations.
- D. At least yearly, the Agency will provide required training on the work-life benefits and programs, including examples of how they can help support an employee with their work performance (e.g. employee's own physical or mental illness, taking care of an elderly parent, a family emergency, a family member's illness, an automobile accident), and points of contact. A written summary of the training will be provided.
- E. A list of points of contact in each Technology Center or business unit equivalent will be posted on each business unit's intranet page.

Section 2 – Safety Zone

If an employee's performance is just below the acceptable range in a critical element, they will have an opportunity to improve their performance prior to being placed on an oral warning.

For quantitative or production-based critical elements:

- A. If the employee's performance is between 80-87% (inclusive) at the end of a fiscal quarter and the employee's previous quarterly performance in that element was at least 88%, the employee will not be placed on an oral warning for the critical element. The Agency will make appropriate efforts to coach and mentor the employee, and if the employee's performance in that element in the following quarter improves to at least 88%, no oral warning will issue.
- B. An employee may benefit from the "safety zone" no more than twice in any rolling five-year period; the third and subsequent occurrences of quarterly performance between 80-87% (inclusive) may result in the issuance of an oral warning, absent extenuating circumstances.
- C. If an employee's production is below 80% at the end of any fiscal quarter, the employee may be placed on an oral warning, absent extenuating circumstances.
- D. If an employee's production qualifies for the "safety zone," but their production performance remains below 88% for a second consecutive quarter, an oral warning may be issued.

For quality elements, whether performance falls into the quality "safety zone" will be determined similarly as the quantitative elements.

Section 3 - Oral Warnings

If the safety zone of Section 2 does not apply, an employee may be placed on an oral warning.

- A. The placement of an employee on an oral warning will be communicated through a discussion or email, and will be quickly followed by a written confirmation of the oral warning. This confirmation may be delivered by hand, by email, or by mail. If the written confirmation of oral warning is not delivered to the examiner in the same pay period that the oral warning was issued, then the start of the oral warning period will be delayed until the beginning of the pay period in which the examiner receives written confirmation.

- B. The oral warning generally will start at the beginning of a fiscal quarter, and terminate at the end of the same fiscal quarter. The oral warning period will be extended by one pay period for each 80 hours the employee is on approved absence during the oral warning period.
- C. As with the other critical element evaluations, docket management evaluation will start at 0.

Section 4 - Repeated performance warnings

An employee who repeatedly alternates between unacceptable and acceptable performance in a manner that avoids the issuance of a written warning PIP (i.e. an employee who passes an oral warning in one quarter, then becomes unacceptable in the same critical element thereafter), will be handled in the following manner:

- A. In any rolling five-year period, an employee may receive three oral warnings in any one critical element or quality category.
- B. A third oral warning in the same critical element or quality category within the five-year period will result in not only in an oral warning, but also notice to the employee that a fourth warning in that same critical element or quality category within the five-year period may result in the employee being issued a written warning (statutory performance improvement period) with a corresponding 1-year maintenance period if the employee passes the written warning, rather than a fourth oral warning.
- C. Subsequent unacceptable performance in the same critical element or quality category within a five-year period that would otherwise result in an oral warning may instead result in a written warning and corresponding 1-year maintenance period if the employee passes the written warning(s).

Section 5 - Written Warning Performance Improvement Period (WWPIP)

- A. If an employee does not successfully complete the oral warning, the employee may be placed on a statutory written warning performance improvement period (WWPIP).
- B. A written warning may be issued in person or by email, and will identify the element(s) of the employee's Performance Appraisal Plan for which the warning is being issued. The WWPIP will not begin to run until after the written warning has been issued. A WWPIP will be seven pay periods/biweeks in duration. The WWPIP will be extended by one pay period for each 80 hours the employee is on approved absence during the written warning performance improvement period. For example,

if an employee takes 100 hours of approved leave, the PIP will be extended 1 biweek (for 80 hours). The remaining 20 hours of approved leave will be counted towards the next 80 hours for extension purposes.

C. Determinations regarding whether an employee has passed their WWPIP will generally be made, and communicated in writing to the employee, during the pay period immediately following the end of the written warning performance improvement period (usually bi-week 8).

D. As with the other critical element evaluations, docket management evaluation will start at 0.

E. Maintenance periods

1. An employee who passes their WWPIP is required to maintain at least marginal performance in the critical element(s) upon which the WWPIP was based for the remainder of the one-year period beginning with the start of the written warning.
2. Following the written warning and the one pay period administrative period (usually bi-week 8), success or failure in the maintenance period will be determined by considering the employee's performance in the critical element(s) upon which the written warning was based in each of three evaluation periods: pay periods 9-14, pay periods 15-20, and pay periods 21-26. No evaluation period will be shorter than 6 full pay periods.
3. On a bi-weekly basis during the maintenance period, employees will be provided with reports of their performance in the critical element(s) one or more Quality categories upon which the written warning was based.
4. If an employee is on approved absence for at least 80 hours during any of the three evaluation periods, the evaluation period during which the absence occurs will be extended by one bi-week for each 80 hours of approved absence and subsequent periods will be delayed. For example, if an employee is on approved absence for 160 hours during the first evaluation period, that evaluation period will run from pay periods 9-16, and the second evaluation period will be pay periods 17-22. Since these adjustments would result in a final evaluation period of less than six pay periods, the third and final evaluation period would include the second evaluation period and would run from pay periods 17-26.

5. Failure to maintain at least marginal performance in any of the critical element(s) upon which the written warning was based, during any one of the evaluation periods, may result in the Agency initiating a performance-based action.

Section 6

The PIP will contain the following information:

- A. Identification of the critical element(s) and performance standards for which performance is unacceptable and include the minimum performance standard, as set forth in the employee's performance plan, that must be achieved in order to successfully complete the PIP.
- B. Identification of the Office's performance expectations and the specific improvement needed to address the unacceptable performance;
- C. Statement of the length of time of the PIP, during which the employee has to bring performance up to at least the marginal performance level, including when a PIP is extended;
- D. Description of what the Office will do to assist the employee to improve the unacceptable performance during the PIP. The Office may, upon written request of the employee, provide training, closer supervision, mentoring, counseling or other assistance as appropriate to the employee to meet performance expectations before taking action to remove the employee from their position;
- E. Identification of which supervisor or management official(s) will be overseeing the PIP and available, to assist the employee in reaching at least a marginal level of performance;
- F. Meetings that may be conducted at the request of the employee or at the discretion of the supervisor. These meetings may be remote, and the Office will not require an employee to be present in-person if the employee is teleworking. Regular meetings (at least biweekly) are encouraged between the supervisor or appropriate management official(s) and the employee to discuss the status of the employee's performance and continued expectations; and
- G. Statement that unless the employee's performance in the critical element(s) improves to a minimally acceptable level (i.e., at least marginal) by the end of the PIP and is sustained for a period of one (1) year from the start of the PIP (maintenance period), the employee may be reduced in grade or removed.

H. For every 80 hours of approved absence, the PIP will be extended an additional bi-week. For example, if in a given pay period an employee reaches 120 hours of approved absence, the maintain period will be extended an additional biweek. 40 remaining hours be counted towards the next 80 hours of approved absence.

Section 7

Management will provide bi-weekly reports of the employee's performance metrics in relation to their performance expectations for the one (1) year period at the start of the PIP. Management will notify the employee of any potential issues with performance prior to the conclusion of any period of assessment in order to provide the employee with an opportunity to address any shortcomings in performance. Failure to provide such notice as set forth above will preclude an action for removal or reduction in grade until the employee has had a reasonable opportunity to address the performance shortcomings with proper notice.

ARTICLE D
EQUAL EMPLOYMENT OPPORTUNITY

Section 1

The Office and the Association agree to fully support Equal Employment Opportunity (EEO), the Federal Equal Employment Opportunity Program and the terms of this Article.

Section 2

The Agency shall not discriminate against any employee on the basis of race, color, religion, national origin, age, marital status, sex, physical or mental disability, sexual orientation, gender identity and/or expression (including nonbinary), genetic information, political or employee organization affiliation, or pregnancy/lactation.

Section 3

Any meeting conducted for the purpose of reaching a final settlement of a discrimination complaint involving a bargaining unit member shall be treated as a formal meeting and, therefore, shall be subject to the statutory and contractual provisions applicable to formal meetings.

Section 4

The Agency and the Association agree to encourage those employees having an underrepresentation in the above-mentioned groups to qualify for and apply for higher level positions. The Agency agrees to make modifications in the work schedules of employees to permit them to obtain training or education to so qualify for such positions. Both parties agree to support increasing the use of Schedule A hiring authorities to increase representation of qualified individuals with disabilities in the USPTO workforce.

Section 5

The Agency shall provide the Association with a copy of the current Office Affirmative Action Plan (AAP) and a copy of the EEO complaint procedure.

- A. The Agency agrees, at such times as the AAP is revised, to provide the Association with a draft copy of the revised plan, prior to the proposed implementation. The Association shall review the revised plan and provide appropriate comments thereto and/or provide negotiation proposals. Written

reasons will be given to the Association regarding any rejected suggestions.

- B. The Association agrees that negotiation proposals relative to a revised AAP are governed by the procedures set forth in the Article on mid-term bargaining.

Section 6

The Agency agrees that a copy of the EEO complaint procedure shall be posted on each floor occupied by Association members, and shall be maintained on the website of the Office of Equal Employment Opportunity and Diversity (OEEOD).

Section 7

The Agency shall annually provide the Association with the following information:

- A. workforce composition by race, sex, disclosed disability and grade level;
- B. composition of each major occupation (job series) by race, sex, disclosed disability and grade level;
- C. upward mobility positions filled by race, sex and disclosed disability;
- D. numbers and types of discrimination complaints filed; and
- E. Numbers and outcomes of reasonable accommodation requests filed by bargaining unit members

Section 8

The Agency will maintain an EEO counselor system to provide counseling to any aggrieved person who believes that they have been discriminated against because of race, color, religion, national origin, age, marital status, sex, physical or mental disability, sexual orientation, gender identity and/or expression (including nonbinary), genetic information, political or employee organization affiliation, or pregnancy/lactation. The EEO counselor system is not available to an aggrieved person who believes that they have been discriminated against for other reasons.

Section 9

The Office will select and train all EEO counselors.

Section 10

In an attempt to resolve discrimination charges as early as possible, EEO counseling will be provided to an aggrieved employee on an informal basis, before a formal EEO complaint is filed.

Section 11

Contact information for OEEOD, including a central phone number and email address, will be posted in a conspicuous location in an enclosed or protected bulletin board on each floor where unit employees work, and will be maintained on the website of the OEEOD.

Section 12

An employee(s) may bring an issue to the attention of the Ombudsman even if it is the subject of an EEO complaint or potential EEO complaint. If an EEO complaint has not been filed, the employee or union must timely notify OEEOD of the nature of the issue that may become an EEO complaint, and that the issue has been brought to the attention of the ombudsman. This notification will lead to an automatic 90 days pause in the EEO process (this can include a pause in the deadline to file a complaint). The union representative or the employee will notify OEEOD if the issue is resolved successfully prior to the termination of the 90 day pause. The pause will run from 90 days of the notification. The union representative or the employee will notify OEEOD if the issue is resolved successfully prior to the termination of the 90 day pause. Upon such notice, the EEO complaint will be closed. If only part of the issue is resolved through use of the ombudsman, the portion not resolved will remain in the EEO process.

Section 13

An aggrieved employee shall be given an opportunity to select any one of the designated counselors to handle their complaint, as long as the selected counselor is available.

Section 14

An aggrieved employee, if in a duty status, shall be granted a reasonable amount of time to contact and explain his/her complaint to an EEO counselor.

Section 15

The Agency agrees to provide adequate facilities wherein an aggrieved employee and the EEO counselor can discuss the matter forming the basis of the complaint in a confidential setting/forum that is excluded from other persons.

Section 16

The purpose and subject matter of an EEO counselor's visit to an aggrieved employee's work site shall be kept confidential unless authorized to be released by the aggrieved employee.

Section 17

The counselor selected by an aggrieved employee shall attempt to resolve the complaints or matter(s) raised by said employee on an informal basis and to the satisfaction of said employee before the complaint is filed under 29 CFR 1613.214.

Section 18

Any resolution of a complaint that is proposed by an EEO counselor shall be fair, equitable and where feasible designed to prevent similar complaints from arising in the future. No counselor will coerce or pressure an aggrieved employee to accept a proposed resolution.

Section 19

The Agency will, upon request, promptly provide any EEO counselor with pertinent data and information necessary to assist the counselor to fairly and equitably resolve a complaint. The aggrieved employee will be provided with a copy of the counselor's report.

Section 20

The OEEOD shall keep the names and identities of employees who contact OEEOD confidential, except as required by law or as required to process informal and formal complaints, reasonable accommodation requests, requests for counseling, or provide other services provided by OEEOD. If an employee's name or other identifying information will be disclosed to anyone outside OEEOD, the employee will be informed before any disclosures are made.

Section 21

An employee may designate any individual who is not a USPTO manager as their representative in any interactions with OEEOD.

Section 22

When contact is made with the aggrieved employee, the counselor shall inform said employee of information concerning the availability of applicable EEO Statutes, Regulations, Departmental Orders and Agency (USPTO) Orders and Guidelines. Upon request, copies of information may be provided to employees.

Section 23

An EEO counselor shall not use pressure or coercion of any form to prevent an aggrieved person from filing a formal complaint.

Section 24

The EEO counselor shall provide the aggrieved employee with a written summary of the resolution of any complaint at least ten (10) working days prior to submitting it to the Office of Human Resources.

Section 25

Notice of EEO counselor vacancies shall be posted on all bulletin boards and published on the USPTO intranet. Interested unit employees may apply.

Section 26

The parties agree to meet at least twice per year to discuss EEO matters of mutual interest. Reasonable time will be granted for such meetings.

Section 27

To the extent permitted by law and government-wide regulation, the Office shall make whole any unit member who has been subjected to unlawful discrimination.

Section 28

OEEOD shall render a decision on reasonable accommodation requests within 30 calendar days after the request is filed. In the event submitted medical documentation is deemed insufficient to support the requested accommodation, OEEOD will inform the requesting employee and their representative, and allow them 15 days to submit updated medical documentation prior to rendering a decision denying the request.

based on insufficient medical documentation.

Section 29

An employee is not precluded from filing a grievance over an EEO matter solely because she has first consulted with an EEO counselor. Only if she has filed a formal EEO complaint through the agency's internal EEO complaint process is she precluded from filing a grievance over the same matter.

ARTICLE E

AWARDS

Section 1: Quality Step Increases

- A. An employee is eligible for a quality step increase if, in accordance with this Article and the employee's performance appraisal plan, the employee performs at an outstanding level (overall score of at least 460) over a period of four consecutive quarters. Because a quality increase will indefinitely raise the employee's salary, the employee's performance must give promise of continuing at the same high level in the same grade and type of position.
- B. Where a standard that measures the quantity of accomplishment for a critical element is included in the performance appraisal plan, an achievement of 110% of an assigned goal shall be the award goal on the factor of quantity to warrant the grant of a QSI. An achievement of 117.5% of an assigned goal shall be prima facie evidence of sufficiently exceptional performance on the factor of quantity to warrant the grant of an additional QSI to an employee having one effective QSI. Achievements of 123%, 128% and 133% are the award goals for employees having two, three and four effective QSIs, respectively. With respect to all performance standards other than quantity, the achievement required for second and subsequent QSIs shall be the same as for the first QSI.
- C. An "effective" QSI is a QSI that raises the salary of an employee above the salary level the employee would be at had the employee received each within-grade increase in the employee's current grade in the minimum time provided by law and regulation. No QSI earned prior to a grade promotion or a change in rank that increases the employee's assigned goal shall be considered an effective QSI. When a salary increase due to a QSI is blocked by a pay cap, that QSI is not an effective QSI.
- D. To be eligible for a quality step increase, an employee must have spent a minimum of 1400 hours during the four-quarter award period performing the functions of the employee's job. The functions of a patent examiner's job are patent examining and examining related activities.
- E. For employees assigned to the Office of the Chief Information Officer or the Office of the Chief Financial Officer:
 - 1. A QSI recognizes performance with an additional within-grade salary increase, and increases the employee's rate of basic pay permanently.
 - 2. To be eligible, an employee must receive an Outstanding rating level.
 - 3. QSIs are awarded at management's discretion.
 - 4. A QSI is offered in lieu of a lump sum cash award. Employees may not receive both a QSI and a cash performance award in the same appraisal

- period.
5. If the supervisor has determined that the employee is eligible and will be granted a QSI, the employee may elect to receive a QSI in lieu of the annual performance award.

Section 2: Special Achievement Awards for Superior Performance

- A. An employee is entitled to a special achievement award if, in accordance with the employee's performance appraisal plan, the employee performs at the following level over a period of four consecutive quarters:
 1. For patent examiners and classifiers: 110% of an assigned goal for employees having no effective QSIs or 10 percentage points above the minimum quantitative achievement necessary to qualify for the employee's most recent effective QSI. A satisfactory level of performance in each other performance element is also required.
 2. For bargaining unit members other than patent examiners and classifiers: performance at the outstanding level for at least 50% of the critical elements and a satisfactory level of performance in each other performance element.
- B. The basic amount of a special achievement award shall be 3% of the employee's current base per annum salary as of the end of the award period. An employee who has spent at least 1400 hours during the award period performing the functions of the employee's job shall receive the basic amount. An employee who has spent less than 1400 hours during the four-quarter award period performing the functions of the employee's job shall receive a proportionate amount. The proportionate amount shall be 3% of the employee's base per annum salary times the number of hours spent performing the job functions divided by the 1400 hour base. The functions of a patent examiner's job are patent examining and examining related activities.
- C. If the award period for a special achievement award encompasses the date when an employee has received a promotion or a permanent increase in signatory authority, the quantitative achievement required to earn a special achievement award shall be the sum of:
 1. 110% of the minimum quantitative achievement necessary to qualify for the promotion or permanent increase in signatory authority for the 13 pay periods prior to said date; and
 2. The achievement that would be otherwise necessary for an award during the periods outside said 13 pay periods.

Section 3: Productivity Gainsharing Awards

A. Productivity Award

An employee is entitled to a Productivity Gainsharing Award in an amount based upon the percentages listed below of the employee's current base per annual salary as of the end of the award period if an employee performs at the following levels over a complete fiscal year beginning October 1, 2024 or any portion of a subsequent fiscal year as provided for under Section 4A.

1. For patent examiners:

Achievement of Goal*	Amount of Current Base Salary
100-114%	2%
115-119%	3%
120-124%	4%
125-129%	5%
130-134%	6%
135% or higher	7%

At least a Fully Successful level of performance in all critical elements of the employee's Performance Appraisal Plan is required.

2. For classifiers:

Achievement of Goal*	Amount of Current Base Salary
100-114%	2%
115-119%	3%
120-124%	4%
125-129%	5%
130-134%	6%
135% or higher	7%

The classifier's production shall be reduced to a single percentage achievement by creating a weighted average of the percent achievement for all production tasks with the weighting factor being the time spent on each task.

Employees in part 1 and 2 above who have spent at least 1400 hours in a fiscal year performing the functions of the employee's assigned job shall receive the full amount designated above within the appropriate award category. An employee who has spent fewer than 1400 hours in a fiscal year performing the functions of the employee's assigned job shall receive a proportionate amount within the appropriate award category. The proportionate amount shall be the full amount of the appropriate award times the number of hours spent performing the job functions divided by the 1400 hour

base. The functions of patent examiner's assigned job are patent examining and examining related activities.

3. For employees assigned to the Office of the Chief Financial Officer or the Office of the Chief Information Officer:
 - a. Employees with less objective production criteria or with annual performance targets who receive an Outstanding performance rating and who receive a Special Achievement Award under Section 2.A-B shall receive an additional 2% individual award.
 - b. Employees with less objective production criteria or with annual performance targets who are not eligible to receive a Special Achievement Award shall receive:
 - i. 1% for Fully Successful performance rating (summary score of 350 or higher)
 - ii. 3% for Commendable performance rating
 - iii. 5% for Outstanding performance rating
 - c. In addition, the parties will annually negotiate organizational goals (including some stretch goals) that can provide up to an additional 3%.

4. For all other members of the bargaining unit:

Total Score Critical and Amount of Current Non-Critical Elements	Base Salary
460-474	1%
475-489	3%
490-500	5%

*The percentages set forth above are applicable for employees having no effective QSIs. For employees with effective QSIs, the performance necessary for award consideration are 10, 15, 20, 25, 30 or 35 percentage points above the minimum quantitative achievement necessary to qualify for the employee's most recent effective QSI.

No Productivity Award shall include the hours of an employee's first year in the Patent and Trademark Office.

5. If the award period for a Productivity Award encompasses the date when an employee has received a promotion or a permanent increase in signatory authority, the quantitative achievement required to earn that award shall be:
 - a. 110%, 115%, 120%, 125%, 130%, or 135% as appropriate, of the minimum quantitative achievement necessary to qualify for the

promotion or permanent increase in signatory authority for the number of pay periods, up to 13, that are both within the award period and prior to that date; and

- b. the achievement that would be otherwise necessary for the award during the pay periods that are both outside the 13 pay periods prior to that date and within the award period.

B. Pendency Reduction Award (placeholder)

Section 4: Implementation Procedures

- A. Awards granted pursuant to Section 3 shall be in addition to and independent of any benefit conferred by Sections 1-2 above.
- B. No employee may receive more than one award under any one of Sections 1-3 for the period used to justify the award (i.e. no employee may receive multiple gainsharing awards, SAAs, or QSIs for the period used to justify the award). An employee whose performance merits either a quality step increase or a special achievement award shall have the option to refuse either award or both awards.
- C. A written explanation of the reasons for denial of any award and/or any recognition level required for an award under this Program shall be given to the employee upon their request.
- D. In determining whether an employee has sufficient quantity to earn an award and in determining the number of hours spent performing the functions of the employee's job, some or all of the hours the employee worked overtime may be subtracted from the total number of hours spent performing the functions of the employee's job during the award period. When a patent examiner has overtime hours subtracted, a number of BDs equal to the number of subtracted overtime hours divided by the examiner's H/BD goal will be subtracted from the total BDs achieved during the award period. When a classifier has overtime hours subtracted, an analogous computation will be made.
- E. Awards will be submitted and forwarded to payroll within two months of the end of the award period.

ARTICLE F

LABOR-MANAGEMENT COMMITTEES AND HEALTH AND SAFETY

Section 1

The parties, recognizing the need for improved communication and a better understanding of each other's concerns, agree that a cooperative involvement must exist at all levels of the Agency and the Association in order to enhance labor-management relations. To this end, the parties agree to jointly recommit their efforts to establish and support a Quality Joint Labor-Management Committee System. The objectives of the Quality Labor-Management Committee System are to enhance the quality of work life in the Agency and to improve the effectiveness of the Agency by providing for the discussion of each other's concerns, the open exchange of information, and the opportunity for joint problem-solving of issues and concerns that have an adverse impact on the work environment. It is understood that the establishment of the Quality Joint Labor-Management Committee System is not intended to replace the collective bargaining process or the grievance procedure, but to provide a foundation from which to build and promote the cooperative attitude the parties acknowledge must exist at all levels of the organization.

Section 2

- A. The Agency and the Association will each appoint up to 3 persons from their organizations to serve as members of each of the following Quality Discussion Groups (each person must work in the area the Discussion Group represents):
 - (1) Chemical Quality Discussion Group
 - (2) Designs and Others Quality Discussion Group
 - (3) Electrical Quality Discussion Group
 - (4) Mechanical Quality Discussion Group
- B. The Office shall not appoint managers above the level of first line supervisor to serve as members of the Quality Discussion Groups.
- C. The Association shall not appoint Association Official/Representatives to serve as members of Quality Discussion Groups.

Section 3

- A. Quality Discussion Group meetings shall be held every two months, and shall be limited to two hours. At the first meeting, a specific day and time shall be selected for future meetings.
- B. The Chair of the Discussion Groups shall alternate every six months between Association and Office Discussion Group members, unless the Group mutually decides to have another arrangement.
- C. The Chair is responsible for calling meetings, maintaining orderly meetings, obtaining agenda items from the members and preparing the meeting agenda.
- D. Except for an agenda, Discussion Group meetings shall be informal.
- E. Except for grievances, Unfair Labor Practices and the like, Discussion Groups may discuss any topic related to the Office work environment, despite the fact that such topic(s) may be outside of the scope of bargaining. However, the Discussion Groups have no authority to amend or delete any term of this Agreement or to compel action on any subject.
- F. The Discussion Groups shall make recommendations and/or reports to the Joint Labor-Management Committee.
- G. Unless the Discussion Group members mutually decide otherwise, the two alternating Chairpersons shall attend Joint Labor-Management Committee meetings as ex officio members and shall report on the recommendations of the Discussion Group or on whatever the Group deems appropriate.
- H. Discussion Group members shall be authorized non-bank official time to attend Group meetings.

Section 4

The Association may periodically send an Association official to a Discussion Group meeting as an observer. However, the Association official shall not participate in the Group meeting. The official's time at the meeting shall be charged to the Association's bank time.

Section 5

When requested by a Discussion Group, arrangements shall be made for key people from the Office, the Association and elsewhere to address the Group.

Section 6

- A. The Association and the Agency shall each appoint 5 representatives from their respective organizations to serve on the parties' Joint Labor-Management Committee.
- B. The two ex officio representatives of the Discussion Groups shall serve as members of the Joint Labor Management Committee.

Section 7

- A. Joint Labor-Management Committee meetings shall be held quarterly and shall be limited to four hours, unless the Committee Chairs mutually agrees otherwise. .
- B. A Standing Joint Sub-Committee on Automation, and a Health and Safety Committee per Section 10 shall be established. The Committee may subsequently establish any standing or special subcommittee it deems appropriate.
 - 1. The Health and Safety Committee and each Standing Joint Sub-Committee shall be composed of six members, three representatives appointed by the Agency and up to three appointed by the Association.
 - 2. Each Standing or Special Joint Sub-Committee shall operate in accordance with Section 3 above, excluding subsection G. The Standing or Special Joint Sub-Committee shall report recommendations to the Joint Labor-Management Committee.
- C. The Joint Labor-Management Committee Chair shall be held jointly by a representative of the Agency and a representative of the Association. Each party will determine whether it will have a permanent or a rotating co-chair at the Joint Labor-Management meetings.
- D. Joint Labor-Management Committee meetings shall discuss, explore and study the recommendations and reports of the discussion groups and the Standing and Special Joint Sub-Committees. By mutual agreement, the committee shall make a recommendation or report to the Agency concerning those issues discussed, explored and/or studied. However, the Committee has no authority to compel or preclude the Office from action or implementing proposed actions. Proposed actions or suggestions may not be implemented without following union bargaining rights.

- E. The Chairs shall have an agenda prepared and distributed to all Committee members at least two business days prior to the meeting. The agenda shall include a brief description of each item to be discussed. Agendas should not be limited to Discussion Group and/or Standing or Special Joint Sub-Committee recommendations and/or reports, although such items shall have priority along with previously scheduled agenda topics. The Joint Labor-Management Committee may add to the agenda any topic of interest to the Association, the employees or the Agency, despite the fact that such topic(s) may be outside the scope of bargaining. Topics not on the agenda shall not be discussed but rather shall be placed on the agenda for the next meeting. Emergency items may be added to the agenda by mutual consent.
- F. Every attempt shall be made to keep to the meeting schedule and agenda and, where possible, the parties will avoid carrying agenda items over more than two meetings.
- G. In order to have a frank and open discussion, the Committee shall have no authority to discuss grievances, unfair labor practices or the like, or to amend or delete any of the terms of this Agreement or any other agreement between the agency and the union.
- H. When necessary, appropriate arrangements will be made for experts to address the Committee.

Section 8

The parties recognize that they may need a neutral facilitator to assist in their move towards a better understanding of each other's concerns and a more cooperative, problem solving relationship. In this regard, the parties may agree to obtain a facilitator to provide at least the following functions:

- A. Bring the parties together and Chair at least some meetings.
- B. Provide the parties with feedback and recommendations concerning their participation in the system.
- C. Assist in planning if it is needed.
- D. Assist in controlling the agenda (provide the neutral presence which allows disagreement to be expressed but kept controlled and within acceptable limits).

- E. Help committee participants identify issues which can best be worked on in smaller groups, task forces, or subcommittees and assist in setting up such groups.
- F. Provide one-on-one consultation with Agency managers, Association officials, and employees.
- G. Provide the parties with information about similar programs and arrange for experts to address the committees where necessary.

Section 9

After six (6) Joint Labor-Management meetings, the parties will assess their progress under the Quality Joint Labor-Management Committee System and determine if it should be modified.

Section 10 Health and Safety

- A. The Association may appoint Association Official/Representatives, or any other bargaining unit members, to serve as members of the JLM Health and Safety Committee.
- B. The Joint Labor Management (JLM) Health and Safety Committee will continue to perform the following functions
 1. Consult and advise the Agency concerning the health and safety conditions, practices (existing and proposed), programs and regulations within USPTO;
 2. Promote employee health and safety education, which will consist of, but not be limited to, training for emergency evacuation of the buildings, training in first aid, training in the use of defibrillators, and training in the use of fire extinguishers for an appropriate number of employees for each floor;
 3. Provide a means for presentation and evaluation of employees' comments; and
 4. Conduct semi-annual safety inspections of facilities and recommend measures for the elimination or control of conditions hazardous to the health and safety of the employees, especially employees with disabilities.

- C. The Health and Safety Committee shall be furnished with copies of all reports furnished to the Department of Labor under terms of the Occupational Safety and Health Act.
- D. Fifteen (15) days after the Office determines which Committee recommendations will not be adopted, the Association shall be notified of such in writing, including the reasons therefor.

Section 11

The Agency will continue to hold the Labor Management Forum.

ARTICLE G
HEALTH SERVICES

Section 1

At regional offices, the Agency will provide the same health services that are provided for USPTO employees in all of the other locations (buildings) occupied by USPTO employees. USPTO will endeavor to persuade government agency health services, closer to such employees to provide emergency medical services to such employees.

Section 2

The Health Unit will compile a list of employees with determined emergency health problems from information voluntarily submitted by employees. The purpose of the list is to facilitate advice or services obtained in the event of an emergency. The Office shall maintain the information submitted and the list in a strictly confidential fashion.

Section 3

The Agency shall continue to provide existing health services in Alexandria and the regional offices.

Section 4

Upon request, the Agency shall supply an employee with the results of any test or examination given them.

Section 5

- A. Each fiscal year, a bank of 25 hours will be available for employees to participate in wellness programs, such as those offered within the agency: Fitness Center, the Health Unit; or those offered elsewhere.
- B. Employees will be permitted 1 hour of administrative leave up to three times per week for physical activity (such as walking, running, taking an exercise class, working out at the gym or at home).

ARTICLE H
PROBATIONARY EMPLOYEES

1. Probationary employees will attend an office paid trip within 1 month of their entry on duty to complete administrative activities (e.g. PIV badge), and engage with other new employees.
2. In new employee orientation, the office paid trip will be discussed, including the dates of the trip.
3. If an employee is hired remotely and later discovers that their internet connection does not meet agency requirements, the employee will be given the option of reporting to a USPTO office as their primary worksite or finding a local worksite which meets the requirements for an alternate worksite. The employee will be given ample time, at least two (2) months, to relocate if they live beyond 50 miles of an office.
4. Any charges incurred by an employee for required fingerprinting will be reimbursed.
5. For patent examiners in the Patent Training Academy, the work schedule will be modified as follows:

Based on training needs of the Academy during the initial 4-month residency of the 2-phase 12-month program, the work schedules for Academy examiners are as follows:

Weeks 1 and 2: 8:30 A.M. to 5:00 P.M fixed schedule.

Weeks 3 and 4:

- General work weeks, i.e. work weeks without a holiday
 - M-TH week 3, Friday off
 - M-F week 4
- All hours worked must be completed during the times allotted on the Learning Management System (LMS) schedule to meet the 80 hour work requirement.
 - Time identified as “Work on Applications” is flexible training time to be utilized as necessary to meet the 80 hours per bi-week requirement.

“Work on Applications” can only be worked or “flexed” during the scheduled time slots indicated in the (LMS).

- Only hours listed in the LMS on a given day can be worked. For example, you cannot work from 6:30 a.m. to 7:30 a.m. prior to “Work on Applications” time from 7:30 a.m. to 10:30a.m. that day.
 - Examiners are responsible for managing their time to make sure they have the hours available to complete all required training; i.e. not to work 80 hours prior to the second Friday.
- The weekly core hour, every Thursday from 1-2 p.m. ET, must be worked or have leave approved for that hour.
 - A holiday will be credited with 8 hours

Week 5 to the week of transition to the Technology Center

The purpose of the available schedules is to maximize the training benefit for patent examiners and to provide opportunities for interaction with fellow employees during the time they are in the Academy. Examiners at the Academy can elect to work either of the two schedules outlined below once the majority of their time is spent examining patent applications on production. Note that after the initial election of the schedule, change to a different schedule may occur on a quarterly basis.

SPE/Trainers have the flexibility of mandating that the employee starts at a specific designated time, as early as 7:30A.M. ET, or end at a specific designated time, as late as 5:00 P.M. ET, if needed, to attend training sessions and/or to allow the close supervision required to understand and perform the duties of their position.

A) Modified Increased Flextime Policy (IFP):

- Work must start between the hours of 5:30 A.M. and 9:30 A.M. in their local time zone, assuming that there is no scheduled lecture before that time.
- A holiday will be credited with 8 hours
- Work cannot be performed on the first Friday of the pay period, holidays, or weekends.
- In addition to the first Friday of the pay period, the second Friday may be taken off unless there is a lecture scheduled for that day.
- No more than 10 hours may be worked in a work day.
- A work day may end at 8:00 P.M.*
- Minimum number of hours worked per day is 6 hours, Monday through Thursday.
- Examiners are responsible for managing their time if there is a required second Friday training/event; i.e. not to work 80 hours prior to the second Friday.
- The weekly core hour, every Thursday from 1-2 p.m. ET, must be worked or have leave approved for that hour.

- Other than during required training, examiners may use mid- day flex. For example, an examiner may work from 9:30 A.M.to 3:30 P.M. and then work from 6:00 P.M. to 8:00 P.M. to complete an 8-hour day.*
- This schedule does not require a lunch break; if one is taken, the time is treated as mid-day flex

B) Compressed 5/4/9 Schedule:

- Eight 9-hour days and one 8-hour day are worked per pay period. The 8-hour day must be the last day worked in the pay period.
- A 30 minute unpaid break is required for any day in which an examiner works more than 6 hours.** (The 30 minute unpaid break cannot be taken at the beginning or the end of the work day.) Consequently, a 9-hour day is 9 ½ hours, and an 8-hour day is 8 ½ hours, .
- Day off will be the first Friday of the pay period.
- Work must start between 5:30A.M. and 9:30A.M.
- The working hours must be set for each day for the entire bi-week. The working hours do not have to be the same every day, but must be set. Examiners should review the training schedule prior to selecting the working hours for that bi-week.
- Holiday hours will be determined by the scheduled set hours for that day.

* Examiners, to the extent possible, should limit work hours outside the hours of 7:30 A.M. and 6:00 P.M. ET to ensure resources are available for needed help and they can perform the work without direct supervision. GS 5 and 7 examiners are reminded that it is against the Fair Labor Standards Act (FLSA) to work uncompensated overtime.

** Employees do not have to work 6 hours before taking a lunch break.

ARTICLE I
VOLUNTARY INTRA-AGENCY TRANSFERS

1. At any time, employees may submit a written request for reassignment that expresses their desire for voluntary reassignment.
2. Nothing derogatory shall be connoted in any request for transfer or any response to the request and the individual so requesting shall be free of discrimination or reprisal therefore.
3. When a request for a transfer to the same or similar job position in a different work area, the request must include the following information to inform the Agency's consideration of their request:
 - a. For patent examiners: The request will include information regarding their technological background (e.g. degree, coursework, prior work experience, technology preference) and any other relevant information
 - b. For non-examiners: the request will include information regarding work experience and any other relevant information.
4. A work area may be within the same business unit or in a different business unit. For example, a patent examiner may request a transfer within the Patents Business Unit, or, an accountant may request a transfer from one business unit to another business unit.
5. In evaluating a transfer request, the decision maker will consider the following factors:
 - Reason(s) for the request
 - Education and work experience
 - Recent performance in all PAP elements
 - Office workload/business need
 - Conduct actions
 - Current performance/performance issues
 - Retention
 - Personality conflicts

For patent examiners, transferees may be asked to work on trial applications in the requested area.

6. Requests will be submitted to Agency established business unit e-mailboxes.
7. Employees under oral warning or written warning performance improvement periods may be considered for transfer. Performance issues will not be the sole reason used for denying a transfer, and will not preclude a transfer.
8. Probationary employees may be considered for a transfer.
9. Decisions on transfer requests will be communicated back to the employee, normally within 3 weeks of the request submission date. If a transfer is denied, reasons will for the denial will be communicated to the employee.

Appendix: transfer request form

ARTICLE J
RETIREMENT PLANNING AND COUNSELING

Section 1

- A. The Agency will provide a retirement planning program at least once per year.
- B. The retirement planning program shall include the following training seminars: early career, mid-career, and approaching/pre-retirement. Information materials and sources will be provided.
- C. Disability retirement will be covered in the retirement planning program.

Section 2

- A. All bargaining unit members currently eligible or within two years of retirement eligibility may attend the approaching/pre-retirement seminar as often as desired.
- B. Non-retirement eligible bargaining unit members who are more than two years to retirement eligibility may attend a retirement seminar once every two years.
- C. If a non-retirement eligible bargaining unit member attends a retirement seminar more than once every 2 years, it will not be considered training. Non-retirement eligible employees who have not attended a retirement seminar in 2 years will take priority.

Section 3

The agency will be responsible for supplying all of the information the employee may need about retirement and continuing insurance coverage into retirement. The agency is responsible for giving the employee an all-inclusive presentation of the retirement process that the employee needs for successful retirement planning.

Section 4

- A. All bargaining unit members currently eligible or within two years of retirement eligibility may receive individual retirement counseling.
- B. Individual retirement Counseling will include informational material, information on phased retirement, and an estimate of the employee's retirement benefits. Each

agency is required by law to have a Retirement Counselor to provide guidance to those responsible for counseling the agency's retiring employees. They will provide complete information as to the retirement procedures established by that agency and utilization of the informational material.

Section 5

Attendance at a retirement seminar and attending retirement counselling will be considered training.

Section 6

For phased retirement, see Appendix X.

ARTICLE K
CONTRACTING OUT

Section 1

For the purposes of this agreement, contracting out is defined as the transfer of any bargaining unit job or job function from USPTO to the private sector that adversely affects bargaining unit employees

Section 2

- A. Simultaneous with the publication of a request for bids or proposals, the Agency will provide the Association with a copy of the request for bids or proposals.
- B. The Association may provide comments to the Agency concerning the contracting out within the time frame provided to contractors.
- C. To facilitate impact and implementation negotiation, the Agency will inform the Association of any pending contracting out, as soon as possible, but not less than 30 days prior to the publication of the request for bids or proposals.

Section 3

Within 10 workdays after the contract has been awarded, the Association will be notified of the name of the awardee, the date of contract implementation and of any impact(s) on bargaining unit employees.

Section 4

When appropriate, the Agency agrees to assist and counsel affected employees in obtaining employment with the contractor and/or other employers. The name and address of the awardee will be provided to all affected employees.

Section 5

When appropriate, the Agency will explain to the affected employees any programs for early retirement or buy-outs being offered

Section 6

Nothing in this Article shall preclude the parties' obligations under Article 14 (Mid-Term Bargaining) of this Agreement.

Section 7

If a Reduction-In-Force becomes necessary due to contracting out, the parties will follow the RIF procedures set forth in Article 35 of this Agreement.

Section 8

- A. Search and Examination shall be conducted domestically. The grant or denial of United States patent rights shall require an examiner employee, as appointed by the Under Secretary and Director of the Agency.
- B. That a proper examination of the subject matter of patents requires a proper search, the search shall not be divorced from the examination. All grants or denials by an examiner employee must have, as a basis, searches that are performed by that examiner employee, except where the application is reassigned to another employee.

ARTICLE L
CHILD CARE CENTERS

Section 1

The parties recognize that USPTO employees need to have reliable and adequate day care services available to them so that they are free to devote their full energy and attention to their duties and responsibilities. The parties recognize and acknowledge that a child care center at the USPTO can result in substantial benefits for the USPTO and its employees. These benefits include, but are not limited to, enhanced employee family life, improved employee morale and performance, reduced use of leave for family-related problems, lower employee turnover and reduced personnel costs for the PTO. Accordingly, the PTO shall maintain the current child care center at the Alexandria headquarters. Any changes in status of the current child care center will be conveyed to the union as soon as possible. In addition, the Agency shall establish a list of existing local day care facilities, including information on occupancy, capacity, rates, location, hours of operation, local licensing status and the local agency responsible for licensing for each USPTO location (headquarters as well as regional office and any additional sites created). The USPTO agrees to make this information available to new employees upon their entry into service and to others who express an interest and publish it on the USPTO internal website at a location made known to the union.

Section 2

USPTO federal employees shall have preference to slots at the USPTO child care center over other employees or the general public. If a waiting list is required, USPTO federal employees will go to the top of the waiting list above non-federal employees or general public but not above any federal employees already on the waiting list.

Section 3

If the Agency provides a child care subsidy program, such program will be discussed per Article 14 (Mid-Term bargaining).

ARTICLE M
ADDITIONAL PROVISIONS

1. Employees will have the opportunity to give 360° reviews of their immediate first line supervisors and their second line supervisors. The reviews may be given anonymously. Result will be aggregated so that it cannot be determined which employee said what.
2. Meetings will not be scheduled consecutively without a break. At least a 10-minute break will be scheduled between consecutive meetings.
3. Meetings will not be scheduled for less than 45-minute increments.
4. For production employees measured on a quarterly and fiscal year basis, meetings, training, and meetings with Deciding Officials will not be held during these quiet times:
 - a. Last bi-week of each FY quarter.
 - b. September
5. Employees will have the option of time off in lieu of monetary awards.
6. Other time is taken in 1-hour increments.
7. When Association representatives work a full day on union time, they may claim other time in less than 1-hour increments.
8. Upon request, an Association meeting held using Agency equipment will be recorded and shared with the Association. The recording will be in a format that can be linked/shared.
9. At all Regional Offices, a private space will be provided for the Association when representatives visit the Offices.

10. Office Supplies will be mailed to full time teleworkers.

11. The Agency will not limit employees from using Agency provided recording tools or personal recording devices.

12. When an employee is injured in the performance of their duty, the employee will promptly be referred to the Office of Human Resources for counseling as to their right to file for compensation benefits and benefits payable when it is known that the absence will be for more than three (3) workdays.

ARTICLE N
INFORMATION TO THE UNION

The Agency will provide the following information to the Union:

Biweekly:

- List of all POPA-covered employees including name, USPTO email address, employee number, occupational series, position title, org/cost code. For patent examiners, include art unit. The patent examiner list and list of other POPA-covered employees will be separate.
- List of all dues-paying members (including employees listed as “wages insufficient”), including email addresses. This list will not include promoted non-bargaining unit employees.
- List of POPA dues deduction forms submitted to OHR and date processed by NFC.
- The Office shall make available to the Association bi-weekly information on the official time used by all employees under each category. The information shall include 13 pay period and fiscal year to date totals.

Quarterly

- Names and email addresses of all POPA employees participating in telework, divided by business unit and telework program.
- Names and email addresses of employees chosen for details and identify the detail. Include start date, proposed end date and end date of the detail if the detail has ended.
- Performance Improvement Period (PIP) information provided within the first biweek of the next quarter:
 - The number of employees on PIPs (oral and written warning);
 - The critical element(s) on which the PIP(s) are based, including a break out of the number of PIPs by critical element;
 - The number of employees who have successfully completed the initial PIP but are still subject to a maintenance period, including what critical element(s) are being evaluated in the maintenance period; and

- Copies of resources and materials used to provide training and assistance to employees on PIPs and maintenance periods with personally identifiable information redacted, including spreadsheets and specific PIP and maintenance period performance metrics reports.
- Number of proposed removals (performance and conduct based) issued per quarter. Number of oral replies. Outcome of decisions: termination, suspension amount, rescission, abeyance agreement.
- Number of abeyance agreements (last chance agreements) breached. This will be provided within the first biweek of the next quarter.
- Number of proposed conduct actions issued per quarter (includes letters of reprimand, proposed suspensions and proposed removals), including the basis of the proposed conduct action (e.g., absent without leave (AWOL), internet usage, etc.). This will be provided within the first biweek of the next quarter.
- Number of conduct actions issued per quarter (includes suspensions, ban and bar, removals), including the basis of the conduct action and the action (e.g., number of days suspended, number of days ban and barred, etc.)
- Number of and names of employees who have left the Agency. The information will be categorized by retirement, termination, resignation, resignation under threat of removal, transfer to another agency. Include the number of years employee had been at agency. For probationary employees, include if the employee was not performing well prior to leaving.
- Part-time program: List of employees participating and under what component of the program (i.e., child care, eldercare, retention, hardship). Include employee number, number of hours per biweek in schedule of work, term of part-time schedule and when the part-time schedule approval is due to start and expire. Include all dates employee was on a part-time schedule.
- Copies of POPA dues deduction resignations forms, including date submitted and date effective. Include forms submitted but too early to resign.
- The number of tickets from the help desk. Tickets categorized by specific events (outage) or tool (Search).
- Metrics on the quality of examination, both from internal and external review
- Number of WIGIs denied, and reasons for the denial

- Accounting of the number of SEE field trips separately for Unit members and managers.
- Percentage of cases returned, and number of average days junior examiners wait have their cases reviewed. Data presented at the Art Unit level.

Twice a year (semiannually)

- Number of employees participating in the non-duty time legal studies and technical training programs. Include the school term reimbursed for, amount and percentage reimbursed per employee (not an average). Provide in January and July.

Prior to the end of FY Quarter 1

- Ratings data for the prior FY for all POPA-covered employees. Include business unit (for patent examining corps, include tech center). Include the overall ratings and ratings for each element.
- Award data for the prior FY for all POPA-covered employees. Include business unit and % and amount of each award.

Yearly:

- Number of hours of other time granted each year broken up by activity (e.g., training, training junior examiners, QEMs, AFCP, etc.). Report by corps and technology center.
- List of all unit employees who have done a career development detail in the last 10 years and the number of details they have participated in as well as the years those details occurred in.
- Number of hours of other time granted each year for CFC activities.
- Number of hours of other time granted each year to participants in affinity groups.
- Plan from management on possible negotiations for the year including PAP renegotiations and other negotiations. The list is in no way meant to limit what can be brought up for discussion but to provide POPA with a heads up.
- At least yearly, update on initiatives whether an agreement exists or not, including use of program and effects on employees. Include other time granted for each program, if applicable.
- Amount of compensatory time lost each year by employees due to not using it within 26 pay periods.

- Equal Employment Opportunity
 - workforce composition by race, sex and grade level;
 - composition of each major occupation (job series) by race, sex and grade level;
 - upward mobility positions filled by race, sex; and
 - numbers and types of discrimination complaints filed;
- Number of full-time teleworkers, amount of internet service reimbursement requests approved/denied.
- The Agency shall annually publish and make readily available (e.g. USPTO intranet page) a list of such outside conferences, seminars and meetings at which attendance was approved in the previous calendar year.
- Not later than one calendar month after the effective date of this Agreement, and by October 31 of each year thereafter, the Agency will provide the Association with a list of all POBA Bargaining Unit employees as of September 30. This list shall set forth for each employee:
 - Their name,
 - Pay plan/series/grade,
 - Bargaining unit code, and
 - Organization/cost center.

Time varies:

- Update on any pilot at least 3 months before possible renewal or discontinuation including number of times (applications) used.
- The names of all newly-hired Unit employees and their business units including initial Art Unit, or equivalent, assignment in the training academy for patent examiners during the member's initial two weeks of employment. In addition, for patent examiners, each employee's assigned art unit, or equivalent, after they leave initial training.

- If the Association is unable to be represented at a formal meeting or chooses not to be represented, the Agency shall promptly prepare a written summary of the meeting at the Association's request.
- Simultaneous with the publication of a request for bids or proposals, the Agency will provide the Association with a copy of the request for bids or proposals
- From Article 18 (non-competitive promotions), criteria for evaluation for career/promotional advancement programs.
- As occurs: Notice when SES and SPEs (or first line supervisors) are appointed including job title, location (business unit or TC and art unit, as appropriate)
- As occurs: Notice to the Association of all meetings where representational attendance is permitted at least 48 hours in advance (not including weekends). These notices include meetings with employees (not including individual art unit meetings not involving moves or changes for personnel).