

**§301-11.24****FEDERAL TRAVEL REGULATION**

- (b) The agency will realize a substantial cost savings by returning you home; or  
(c) Periodic return travel home is justified incident to an extended TDY assignment.

**§301-11.24 What reimbursement will I receive if I voluntarily return home or to my official station on non-workdays during my TDY assignment?**

If you voluntarily return home or to your official station on non-workdays during a TDY assignment, the maximum reimbursement for round trip transportation and per diem or actual expense is limited to what would have been allowed had you remained at the TDY location.

**§301-11.25 Must I provide receipts to substantiate my claimed travel expenses?**

Yes. You must provide a lodging receipt and a receipt for every authorized expense over \$75, or provide a reason acceptable to your agency explaining why you are unable to furnish the necessary receipt(s) (see [§301-52.4](#) of this chapter).

**Note to 301-11.25:** Hard copy receipts should be electronically scanned and submitted with your electronic travel claim when your agency has fully deployed ETS and notifies you that electronic scanning is available within your agency (see [§301-50.3](#) of this chapter). You may submit a hard copy receipt, in accordance with your agency's policies, to support a claimed travel expense only when electronic imaging is not available within your agency.

**§301-11.26 How do I get a per diem rate increased?**

If you travel to a location where the per diem rate is insufficient to meet necessary expenses, you may submit a request, containing pertinent lodging and meal cost data, through your agency asking that the location be surveyed. Depending on the location in question your agency may submit the survey request to:

For CONUS locations	For non-foreign area locations	For foreign area locations
General Services Administration, Office of Governmentwide Policy, Attn: Travel Policy (MTT), 1800 F St. NW, Washington, DC 20405.	Defense Travel Management Office, Attn: SP&P/ Allowances Branch, 4601 N. Fairfax Dr, Suite 800, Arlington, VA 22203.	Director, Office of Allowances, Department of State, Annex 1, Suite L-314, Washington, DC 20522-0103.

**§301-11.27 Are taxes included in the lodging portion of the Government per diem rate?**

No. Lodging taxes paid by you are reimbursable as a miscellaneous travel expense limited to the taxes on reimbursable lodging costs. For example, if your agency authorizes you a maximum lodging rate of \$50 per night, and you elect to stay at a hotel that costs \$100 per night, you can only claim the amount of taxes on \$50, which is the maximum authorized lodging amount. This section is effective January 1, 1999, for CONUS locations and effective January 1, 2000, for non-foreign areas. For foreign areas, lodging taxes have not been removed from foreign per diem rates established by the Department of State. Separate claims for lodging taxes incurred in foreign areas are not allowed.

**§301-11.28 As a traveler on official business, am I required to pay applicable lodging taxes?**

Yes, unless exempted by the State of local jurisdiction.

**§301-11.29 Are lodging facilities required to accept a generic federal, state or local tax exempt certificate?**

Exemptions from taxes for Federal travelers, and the forms required to claim them, vary from location to location. The GSA Per Diem Rates webpage (<http://gsa.gov/perdiem>) provides more information on State tax exemptions.

**§301-11.30 What is my option if the Government lodging rate plus applicable taxes exceeds my lodging reimbursement?**

You may request reimbursement on an actual expense basis, not to exceed 300 percent of the maximum per diem allowance. Approval of actual expenses is usually in advance of travel and at the discretion of your agency. (See [§301-11.302](#).)

**§301-11.31 Are laundry, cleaning and pressing of clothing expenses reimbursable?**

Yes. The expenses incurred for laundry, cleaning and pressing of clothing at a TDY location are reimbursable as a miscellaneous travel expense. However, you must incur a minimum of 4 consecutive nights lodging on official travel to qualify for this reimbursement. Laundry and dry cleaning expenses have not been removed from foreign per diem rates established by the Department of State, or from non-foreign area per diem rates established by the Department of Defense. Separate claims for laundry and dry cleaning expenses incurred in foreign areas and non-foreign areas are not allowed.

**§301-11.32 May I be reimbursed for an advanced room deposit in situations where a lodging facility requires the payment of a deposit, prior to the beginning of my scheduled official travel?**

Yes, your agency may reimburse you for an advance room deposit, when such a deposit is required by the lodging facility to secure a room reservation, prior to the beginning of your scheduled official travel. However, if you are reimbursed the advance room deposit, but fail to perform the scheduled official travel for reasons not acceptable to your agency, resulting in forfeiture of the deposit, you are indebted to the Government for that amount and must repay it in a manner prescribed by your agency.

**Subpart B—Lodgings Plus Per Diem**

**§301-11.100 What will I be paid for lodging under Lodgings-plus per diem?**

When travel is more than 12 hours and overnight lodging is required you are reimbursed your actual lodging cost not to exceed the maximum lodging rate for the TDY location or stopover point.

**§301-11.101 What allowance will I be paid for M&IE?**

(a) Except as provided in [paragraph \(b\)](#) of this section, your allowance is as shown in the following table:

When travel is	Your allowance is
More than 12 but less than 24 hours	75 percent of the applicable M&IE rate for each calendar day you are in a travel status.
24 hours or more, on	The day of departure
	75 percent of the applicable M&IE rate.
	Full days of travel
	100 percent of the applicable M&IE rate.
	The last day of travel
	75 percent of the applicable M&IE rate.

(b) If you travel by ship, either commercial or Government, your agency will determine an appropriate M&IE rate within the applicable maximum rate allowable.

**§301-11.102 What is the applicable M&IE rate?**

For days of travel which	Your applicable M&IE rate is
Require lodging	The M&IE rate applicable for the TDY location or stopover point.
Do not require lodging, and	Travel is more than 12 hours but less than 24 hours.
	Travel is 24 hours or more, and you are traveling to a new TDY site or stopover point at midnight.
	Travel is 24 hours or more, and you are returning to your official station.

**Subpart C—Reduced Per Diem**

**§301-11.200 Under what circumstances may my agency prescribe a reduced per diem rate lower than the prescribed maximum?**

Under the following circumstances:

- (a) When your agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate; and
- (b) The lowest authorized per diem rate must be stated in your travel authorization in advance of your travel.

**Subpart D—Actual Expense**

**§301-11.300 When is actual expense reimbursement warranted?**

When:

- (a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;
- (b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;
- (c) Because of mission requirements; or
- (d) Any other reason approved within your agency.

**§301-11.301 Who in my agency can authorize/approve my request for actual expense?**

Any official designated by the head of your agency.

**§301-11.302 When should I request authorization for reimbursement under actual expense?**

Request for authorization for reimbursement under actual expense should be made in advance of travel. However, subject to your agency's policy, after the fact approvals may be granted when supported by an explanation acceptable to your agency.

**§301-11.303 What is the maximum amount that I may be reimbursed under actual expense?**

The maximum amount that you may be reimbursed under actual expense is limited to 300 percent (rounded to the next higher dollar) of the applicable maximum per diem rate. However, subject to your agency's policy, a lesser amount may be authorized.

**§301-11.304 What if my expenses are less than the authorized amount?**

When authorized actual expense and your expenses are less than the locality per diem rate or the authorized amount, reimbursement is limited to the expenses incurred.

**§301-11.305 What if my actual expenses exceed the 300 percent ceiling?**

Your reimbursement is limited to the 300 percent ceiling. There is no authority to exceed this ceiling.

**§301-11.306 What expenses am I required to itemize under actual expense?**

You must itemize all expenses, including meals, (each meal must be itemized separately) for which you will be reimbursed under actual expense. However, expenses that do not accrue daily (e.g., laundry, dry cleaning, etc.) may be averaged over the number of days your agency authorizes/approves actual expenses. Receipts are required for lodging, regardless of amount and any individual meal when the cost exceeds \$75. Your agency may require receipts for other allowable per diem expenses, but it must inform you of this requirement in advance of travel. When your agency limits M&IE reimbursement to either the prescribed maximum M&IE rate for the locality concerned or a reduced M&IE rate, it may or may not require M&IE itemization at its discretion.

**Subpart E—Income Tax Reimbursement Allowance (ITRA), Tax Years 1993 and 1994****General****§301-11.501 What is the Income Tax Reimbursement Allowance (ITRA)?**

The ITRA is an allowance designed to reimburse Federal, State and local income taxes incurred incident to an extended TDY assignment at one location.

**§301-11.502 Who is eligible to receive the ITRA?**

An employee (and spouse, if filing jointly) who was in a TDY status for an extended period at one location, and who incurred Federal, State, or local income taxes on amounts received as reimbursement for official travel expenses.

**§301-11.503 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?**

No. Reimbursement is limited to income taxes.

**Employee Responsibilities****§301-11.521 Must I file a claim to be reimbursed for the additional income taxes incurred?**

Yes. A claim must be submitted in accordance with your agency's policy.

**§301-11.522 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?**

Yes, for the total amount of the income tax penalty and/or interest assessed by the IRS for tax years 1993 and 1994 only.

**§301-11.523 What documentation must I submit to substantiate my claim?**

Your agency will determine what documentation is sufficient. (See [§301-11.531](#).)

**§301-11.524 What steps must my agency take to determine my ITRA?**

Your agency should:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in [§302-11.7](#), [§301-11.8](#), and the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin); or

(b) Determine reimbursement as calculated in the illustration shown in [§301-11.535](#).

**§301-11.525 Is the ITRA I receive taxable income?**

Yes. The amount received must be reported as taxable income in the year in which received, but you are eligible to receive an allowance to cover the taxes assessed on the ITRA under [§301-11.528](#).

**§301-11.526 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?**

Yes, if agreed to in writing by your agency and with the understanding that you will be responsible for any income taxes due without further reimbursement.

**§301-11.527 If I elect a lump sum payment, how is the ITRA paid?**

(a) Reimbursement is as illustrated:

<b>Lump Sum ITRA Tax Paid to Employee</b>	
ITRA reimbursement for tax year 1993	\$14,435
Federal Tax liability on ITRA Reimbursement (@ 28%)	4,042
VA State tax liability (@ 5.75%)	830
Local tax liability	0
Total reimbursement	19,307

(b) Reimbursement of the ITRA and the tax on the ITRA is a final lump sum payment with no further reimbursement. You will be responsible for any income taxes due on \$19,307.

**§301-11.528 If I do not elect lump sum payment is there any additional reimbursement?**

Yes. You are reimbursed for the tax on the tax reimbursement received. Your agency will calculate the tax on the tax reimbursement using the formulas developed for the Year 2 reimbursements of the relocation income tax allowance (see [§302-11.8](#) of this title).

### Agency Responsibilities

**§301-11.531 What documentation must the employee submit to substantiate a claim?**

You must determine what documentation you require to be submitted with the employee's claim. It can include:

(a) A certified statement as prescribed in [§302-17.10](#) of this title or copies of completed Federal, State and local tax return for the tax year in which the taxes were withheld and paid.

(b) Copies of W-2's and Form 1099's.

(c) Any documentation received from the IRS identifying any interest or penalty payment (tax years 1993 and 1994 only).

(d) Any other documentation necessary to substantiate the claim.

**§301-11.532 How should we compute the employee's ITRA?**

You should follow the procedures prescribed for the relocation income tax allowance, see [§302-11.7](#), [§302-11.8](#) and the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) or as illustrated in [§301-11.535](#).

**§301-11.533 Are tax penalty and interest payments reimbursable?**

Yes, the total amount of any penalty and interest assessed by the IRS (for tax years 1993 and 1994 only) due to the failure of the Government to withhold the appropriate income taxes are reimbursable.

**§301-11.534 What tax tables should we use to calculate the amount of allowable reimbursement?**

The tax tables for the year the tax was incurred are to be used.

**§301-11.535 How should we calculate the ITRA?**

(a) Use the documents prescribed in [§301-11.531](#) to calculate the ITRA as follows:

(1) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in [§302-11.7](#), [§301-11.8](#) and the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin); and

(2) Add any penalty or interest for tax years 1993 or 1994 only to determine the full ITRA payment; or

(b) As calculated in the following illustration.

Example of calculating an employee's tax return using the marginal tax rate schedules in the state RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin):

<b>For Tax Years 1993 or 1994 (Married Filing Joint Return)</b>	<b>Original</b>	<b>Recalculated</b>
(1) Adjusted Gross Income (w/ travel reimbursement)	\$75,246	\$75,246
(2) Subtract travel reimbursement	—	(15,482)
(3) Subtract personal exemptions and itemized or standard deductions	(12,689)	(12,689)
(4) Adjusted taxable income	62,557	47,075
(5) Tax liability on adjusted taxable income:		
(a) Federal	17,516 (28%)	*7,061 (15%)
(b) State, VA (5.75% tax bracket)	3,597	2,707
(c) Local: Not applicable	0	0
(d) Total	21,113	9,768

<b>For Tax Years 1993 or 1994 (Married Filing Joint Return)</b>		
	<b>Original</b>	<b>Recalculated</b>
(6) Difference of total of column 1 minus total of column 2: Additional Taxes Incurred due to travel Reimbursement—\$11,345		
(7) Add to the tax difference: (a) Penalty Payment imposed by IRS tax year 1993—1,500 (b) Interest Payment imposed by IRS tax year 1993—1,500		
Total 6 and 7a and b = ITRA—\$14,345**		

\* Adjusted taxable income places employee in lower tax bracket.

\*\* The ITRA reimbursement is taxable income for the year in which paid at the appropriate Federal, State and local income tax rates.

#### **§301-11.536 Is the ITRA reimbursement considered to be income to the employee?**

Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

#### **§301-11.537 Are income taxes to be withheld from the ITRA?**

Yes, as determined by your internal tax withholding procedures established for your agency pursuant to IRS procedures.

#### **§301-11.538 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?**

Yes, if the employee mutually agrees in writing to the lump sum payment and understands that he/she is responsible for any income taxes without further reimbursement. (See the illustration in [§301-11.527](#).)

#### **§301-11.539 If the employee does not elect a lump sum payment, how is the tax on the ITRA calculated?**

The tax on the ITRA reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance. (See [§302-11.8](#).)

#### **§301-11.540 How do we handle any excess payment?**

You must collect any excess payments, which includes issuing corrected W-2's or 1099's.

### **Subpart F—Income Tax Reimbursement Allowance (ITRA), Tax Years 1995 and Thereafter**

#### **General**

#### **§301-11.601 What is the Income Tax Reimbursement Allowance (ITRA)?**

The ITRA is an allowance designed to reimburse Federal, State and local income taxes incurred incident to an extended TDY assignment at one location.

#### **§301-11.602 Who is eligible to receive the ITRA?**

An employee (and spouse, if filing jointly) who was in a TDY status for an extended period at one location and who incurred Federal, State, or local income taxes on amounts received as reimbursement for official travel expenses.

#### **§301-11.603 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?**

No. Reimbursement is limited to income taxes.

#### **Employee Responsibilities**

#### **§301-11.621 Must I file a claim to be reimbursed for the additional income taxes incurred?**

Yes, a claim must be submitted in accordance with your agency's policy.

#### **§301-11.622 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?**

No. The reimbursement of tax penalty and/or interest payment assessed by the IRS is limited by law to tax years 1993 and 1994 only.

#### **§301-11.623 What documentation must I submit to substantiate my claim?**

Your agency will determine what documentation is sufficient. (See [§301-11.631](#).)

#### **§301-11.624 What steps must my agency take to determine my ITRA?**

Your agency should:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in [§302-11.7](#), [§302-11.8](#) and the appropriate RIT tax table(s) located at [www.gsa.gov/firbulletin](http://www.gsa.gov/firbulletin); or

(b) Determine reimbursement as calculated in the illustration shown in [§301-11.535](#).

**§301-11.625 Is the ITRA I receive taxable income?**

Yes. The amount received must be reported as taxable income in the year in which received, but you are eligible to receive an allowance to cover the taxes assessed on the ITRA under [§301-11.628](#).

**§301-11.626 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?**

Yes, if agreed to in writing by your agency and with the understanding that you will be responsible for any income taxes due without further reimbursement.

**§301-11.627 If I elect a lump sum payment, how is the ITRA paid?**

(a) Reimbursement is as illustrated:

<b>Lump Sum ITRA Tax Paid to Employee</b>	
ITRA reimbursement for tax year 1995	\$14,435
Federal Tax liability on ITRA Reimbursement (@ 28%)	4,042
VA State tax liability (@ 5.75%)	830
Local tax liability	0
Total reimbursement	19,307

(b) Reimbursement of the ITRA and tax on the ITRA is a final lump sum payment with no further reimbursement. You will be responsible for any income taxes due on \$19,307.

**§301-11.628 If I do not elect lump sum payment is there any additional reimbursement?**

Yes. You are reimbursed for the tax on the tax reimbursement received. Your agency will calculate the tax on the tax reimbursement using the formulas developed for the Year 2 reimbursements of the relocation income tax allowance (see [§302-11.8](#) of this title).

**Agency Responsibilities**

**§301-11.631 What documentation must the employee submit to substantiate a claim?**

You must determine what documentation you require to be submitted with the employee's claim. It may include:

<b>For Tax Year 1995 and Thereafter (Married Filing Joint Return)</b>	<b>Original</b>	<b>Recalculated</b>
(1) Adjusted Gross Income (w/ travel reimbursement)	\$75,246	\$75,246
(2) Subtract travel reimbursement	—	(15,482)
(3) Subtract personal exemptions and itemized or standard deductions	(12,689)	(12,689)
(4) Adjusted taxable income	62,557	47,075

(a) A certified statement as prescribed in [§302-17.10](#) of this title or a copy of the employee's completed Federal, State and local tax return for the tax year in which the taxes were withheld and paid.

(b) Copies of W-2's and Form 1099's; and

(c) Any other documentation necessary to substantiate your claim.

**§301-11.632 How should we compute the employee's ITRA?**

You should follow the procedures prescribed for the relocation income tax allowance, see [§302-11.7](#), [§302-11.8](#) and the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) or as illustrated in [§301-11.535](#).

**§301-11.633 Are tax penalty and interest payments reimbursable?**

No. The reimbursement of penalty and/or interest payments assessed by the IRS is limited by law to tax years 1993 and 1994 only.

**§301-11.634 What tax tables should we use to calculate the amount of allowable reimbursement?**

The tax tables for the year the tax was incurred are to be used.

**§301-11.635 How should we calculate the ITRA?**

Use the documents prescribed in [§301-11.631](#) to calculate the ITRA as follows:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in [§302-11.7](#), [§302-11.8](#) and the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin), or

(b) As calculated in the following illustration.

Example of calculating an employee's tax return using the marginal tax rate schedules in the state RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin):

<b>For Tax Year 1995 and Thereafter (Married Filing Joint Return)</b>		
	<b>Original</b>	<b>Recalculated</b>
(5) Tax liability on adjusted taxable income:		
(a) Federal (28%)	17,516	*7,061 (15%)
(b) State, VA (5.75% tax bracket)	3,597	2,707
(c) Local: Not applicable	0	0
(d) Total	21,113	9,768
(6) Difference of total of column 1 minus total of column 2: Additional Taxes Incurred due to travel Reimbursement—\$11,345		
Total = ITRA—\$11,345**		

\* Adjusted taxable income places employee in lower tax bracket.

\*\* The ITRA reimbursement is taxable income for the year in which paid at the appropriate Federal, State and local income tax rates.

#### **§301-11.636 Is the ITRA reimbursement considered to be income to the employee?**

Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

#### **§301-11.637 Are income taxes to be withheld from the ITRA?**

Yes, as determined by your internal tax withholding procedures established for your agency pursuant to IRS procedures.

#### **§301-11.638 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?**

Yes, if the employee mutually agrees in writing to the lump sum payment and understands that he/she is responsible for

any income taxes without further reimbursement. See the illustration in [§301-11.627](#).

#### **§301-11.639 If the employee does not elect a lump sum payment, how is the tax on the ITRA reimbursement calculated?**

The tax on the tax reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance. (See [§302-11.8](#).)

#### **§301-11.640 How do we handle any excess payment?**

You must collect any excess payments, which includes issuing corrected W-2's or 1099's.

**PART 301-12—MISCELLANEOUS EXPENSES**

**Authority:** 5 U.S.C. 5707.

**§301-12.1 What miscellaneous expenses are reimbursable?**

When the following items have been authorized or approved by your agency, they will be reimbursed as a mis-

cellaneous expense. Taxes for reimbursable lodging are deemed approved when lodging is authorized. Examples of such expenses include, but are not limited to the following:

General expenses	Fees to obtain money	Special expenses of foreign travel
Baggage expenses as described in <a href="#">§301-12.2</a>	Fees for travelers checks Fees for money orders Fees for certified checks Transaction fees for use of automated teller machines (ATMs)—Government contractor-issued charge card	Commissions on conversion of foreign currency Passport and/or visa fees, including fees for a physical examination if one is required to obtain a passport and/or visa and such examination could not be obtained at a Government facility. Reimbursement for such fees may include travel and transportation costs to the passport/visa issuing office if located outside the local commuting area of the employee's official station and the traveler's presence at that office is mandatory. Costs of photographs for passports and visas Foreign country exit fees Costs of birth, health, and identity certificates Charges for inoculations that cannot be obtained through a Federal dispensary
Services of guides, interpreters, drivers		
Services of an attendant as described in <a href="#">§301-13.3</a>		
Use of computers, printers, faxing machines, and scanners		
Services of typists, data processors, or stenographers		
Storage of property used on official business		
Hire of conference center room or hotel room for official business		
Official telephone calls/service (see note). Faxes, telegrams, cablegrams, or radiograms		
Lodging taxes as prescribed in <a href="#">§301-11.27</a>		
Laundry, cleaning and pressing of clothing expenses as prescribed in <a href="#">§301-11.31</a>		
Energy surcharge and lodging resort fee(s) (when such fee(s) is/are not optional)		

**Note to §301-12.1:** You should use Government provided services for all official communications. When they are not available, commercial services may be used. Reimbursement may be authorized or approved by your agency.

**§301-12.2 What baggage expenses may my agency pay?**

Your agency may reimburse expenses related to baggage as follows:

- (a) Transportation charges for authorized excess;
- (b) Necessary charges for transferring baggage;

(c) Necessary charges for storage of baggage when such charges are the result of official business;

(d) All fees pertaining to the first checked bag. In addition, charges relating to the second and subsequent bags may be reimbursed when the agency determines those expenses necessary and in the interest of the Government (see [§§301-70.300, 301-70.301](#)). Travelers should verify their agency's current policies and procedures regarding excess baggage prior to traveling; and

(e) Charges or tips at transportation terminals for handling Government property carried by the traveler.

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**PART 301-13—TRAVEL OF AN EMPLOYEE WITH SPECIAL NEEDS**

**Authority:** 5 U.S.C. 5707.

**§301-13.1 What is the policy for paying additional travel expenses incurred by an employee with a special need?**

To provide reasonable accommodations to an employee with a special need by paying for additional travel expenses incurred.

**§301-13.2 Under what conditions will my agency pay for my additional travel expense(s) under this part?**

When an additional travel expense is necessary to accommodate a special physical need which is either:

- (a) Clearly visible and discernible; or
- (b) Substantiated in writing by a competent medical authority.

**§301-13.3 What additional travel expenses may my agency pay under this part?**

Your agency approving official may pay for any expenses deemed necessary by your agency to accommodate an employee with a special need including, but not limited to, the following expenses:

(a) Transportation and per diem expenses incurred by a family member or other attendant who must travel with you to make the trip possible;

(b) Specialized transportation to, from, and/or at the TDY duty location;

(c) Specialized services provided by a common carrier to accommodate your special need;

(d) Costs for handling your baggage that are a direct result of your special need;

(e) Renting and/or transporting a wheelchair;

(f) Other than coach-class accommodations to accommodate your special need, under Subpart B of Part 301-10 of this Subchapter; and

(g) Services of an attendant, when necessary, to accommodate your special need.

**Note to §301-13.3(g):** For limits on the amount that may be paid to an attendant, other than travel expenses, see 5 U.S.C. 3102 and guidance at [http://www.opm.gov/disability/mngr\\_6-01-B.asp](http://www.opm.gov/disability/mngr_6-01-B.asp).

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## PART 301-30—EMERGENCY TRAVEL

**Authority:** 5 U.S.C. 5707.

### §301-30.1 What is emergency travel?

Travel which results from:

- (a) Your becoming incapacitated by illness or injury not due to your own misconduct; or
- (b) The death or serious illness of a member of your family; or
- (c) A catastrophic occurrence or impending disaster, such as fire, flood, or act of God, which directly affects your home.

### §301-30.2 What is considered to be “family” with respect to emergency travel?

“Family” includes any member of your immediate family, as defined in [§300-3.1](#). However, your agency may, on a case-by-case basis, expand this definition to include other members of your and/or your spouse’s or domestic partner’s extended family.

### §301-30.3 What should I do if I have to interrupt or discontinue my TDY travel?

Contact your travel authorizing/approving official for instructions as soon as possible.

### §301-30.4 When an illness or injury occurs on TDY, what expenses may be allowed?

Your agency may pay:

(a) Per diem at the location where you incurred or were treated for incapacitating illness or injury for a reasonable period of time (generally 14 calendar days). However, your agency may pay for a longer period.

(b) Transportation and per diem expense for travel to an alternate location to receive medical treatment.

(c) Transportation and per diem expense to return to your official station.

(d) Transportation costs of a medically necessary attendant.

### §301-30.5 Are there any limitations to the payment of these expenses?

Expenses are not payable when:

(a) Confined to:

(1) A medical facility within the proximity of your official station.

(2) The same medical facility you would have been admitted to if your incapacitating illness or injury occurred at your official station.

(b) The Government provides or reimburses you for hospitalization under any Federal statute (including hospitalization in a Department of Veterans Affairs (VA) Medical center or military hospital). However, per diem expenses are payable if your hospitalization is paid under the Federal Employees Health Benefits Program (5 U.S.C. 8901-8913).

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**PART 301-31—THREATENED LAW ENFORCEMENT/INVESTIGATIVE EMPLOYEES**

**Authority:** 5 U.S.C. 5707.

**§301-31.1 Why pay subsistence and transportation expenses for threatened law enforcement/investigative employees?**

To protect a law enforcement/investigative employee and his/her immediate family when their lives are placed in jeopardy as a result of the employee's assigned duties.

**§301-31.2 What is “family” with respect to threatened law enforcement/investigative employees?**

Generally, “family” includes any member of your immediate family, as defined in [§300-3.1](#) of this title. However, your agency may, on a case-by-case basis, expand this definition to include other members of you and/or your spouse’s or domestic partner’s extended family.

**§301-31.3 Are members of my family and I eligible for payment of subsistence and transportation expense?**

Yes, if you serve in a law enforcement, investigative, or similar capacity for special law enforcement/investigative purposes and your agency authorizes such expenses.

**§301-31.4 Must my agency pay transportation and subsistence expenses?**

No. Your agency decides when it is appropriate to pay these expenses based on the nature of the threat against your life and/or the life of a member(s) of your immediate family.

**§301-31.5 Under what conditions may my agency pay for transportation and subsistence expenses?**

When your agency determines that a threat against you or a member(s) of your immediate family justifies moving you and/or your family to temporary living accommodations at or away from your official station.

**§301-31.6 Where must I and/or my family obtain lodging?**

Your agency designates the area where you and/or your family should obtain lodging. It may be within your official station or at an alternate location.

**§301-31.7 May my family and I occupy lodging at different locations?**

Yes, if authorized by your agency.

**§301-31.8 What transportation expenses may my agency pay?**

Your agency may pay transportation expenses authorized by [Part 301-10](#) of this chapter to transport you and/or your family to/from a temporary location.

**§301-31.9 What subsistence expense may my agency pay?**

Only your lodging cost may be paid. However, your agency may pay for meals and laundry/cleaning expenses if:

(a) Your temporary living accommodations do not have kitchen or laundry facilities; or

(b) Your agency determines that other extenuating circumstances exist which necessitate payment of these expenses.

**§301-31.10 How will my agency pay my subsistence expenses?**

Your agency will pay your actual subsistence expenses not to exceed the “maximum allowable amount” for the period you or your family occupy temporary living accommodations. The “maximum allowable amount” is the “maximum daily amount” multiplied by the number of days you or your family occupy temporary living accommodations not to exceed the number of days authorized. The “maximum daily amount” is determined by adding the rates in the following table for you and each member of your family authorized to occupy temporary living accommodations:

If your agency authorizes	The “maximum daily amount” of per diem expenses that		
	You or your unaccompanied spouse, domestic partner or other unaccompanied family member may receive is	Your accompanied spouse, domestic partner or a member of your family who is age 12 or older may receive is	A member of your family who is under age 12 may receive is
Payment of only lodging expenses.	The maximum lodging amount applicable to the locality.	.75 times the maximum lodging amount applicable to the locality.	.5 times the maximum lodging amount applicable to the locality.
Payment for lodging, meals, and other per diem expenses.	The maximum per diem rate applicable to the locality.	.75 times the maximum per diem rate applicable to the locality.	.5 times the maximum per diem rate applicable to the locality.

**§301-31.11 May my agency pay me a per diem allowance instead of actual expenses?**

No.

**§301-31.12 Must I keep track of my expenses?**

Yes. You must keep track of your actual expenses as described in [Part 301-11](#) of this chapter.

**§301-31.13 How long may my agency pay for subsistence expenses under this part?**

Your agency may pay for subsistence expenses up to 60 days. However, your agency may pay for additional periods if it determines that an extension is justified.

**§301-31.14 May I receive a travel advance for transportation and/or subsistence expenses?**

Yes, you may receive a travel advance under [§301-51.200](#) of this chapter for up to a 30-day period at a time to cover expenses allowable. Your travel advance may not exceed the

maximum allowable amount authorized under [§301-31.10](#), and you will be required to reimburse your agency for any portion of the advance disallowed or not spent.

**§301-31.15 What documentation must I provide for reimbursement?**

You must provide receipts or any other documentation required by your agency. However, in instances when documentation might compromise the security of the individuals involved, the head of the agency may waive these requirements.

**SUBCHAPTER C—ARRANGING FOR TRAVEL SERVICES, PAYING  
TRAVEL EXPENSES, AND CLAIMING REIMBURSEMENT**

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**PART 301-50—ARRANGING FOR TRAVEL SERVICES**

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c).

**§301-50.1 To whom do the pronouns “I”, “you”, and their variants throughout this part refer?**

In this part, the pronouns “I”, “you”, and their variants refer to the employee.

**§301-50.2 How must I arrange my travel?**

You must arrange your travel as designated by your agency and in accordance with this part.

**§301-50.3 Must I use the ETS or TMS to arrange my travel?**

Yes, if you are an employee of an agency as defined in [§301-1.1](#) of this chapter, you must use the E-Gov Travel Service when your agency makes it available to you. Until then, you must use your agency’s existing Travel Management Service (TMS) to make your travel arrangements. If you are an employee of the Department of Defense (DoD) or of the Government of the District of Columbia, you must arrange your travel in accordance with your agency’s TMS. Your agency may grant an exception to required use of TMS/ETS under [§§301-50.4](#), [301-73.102](#), or [301-73.104](#) of this chapter.

**§301-50.4 May I be granted an exception to the required use of TMS or ETS once my agency has fully deployed ETS?**

Yes, your agency head or his/her designee may grant an individual case exception to required use of your agency’s current TMS or to required use of ETS once your agency has fully deployed ETS, but only when your travel meets one of the following conditions:

(a) Such use would result in an unreasonable burden on mission accomplishment (*e.g.*, emergency travel is involved and TMS/ETS is not accessible; you are performing invitational travel; or you have special needs or require disability accommodations under part [301-13](#) of this chapter).

(b) Such use would compromise a national security interest.

(c) Such use might endanger your life (*e.g.*, you are traveling under the Federal witness protection program, or you are

a threatened law enforcement/investigative officer traveling under part [301-13](#) of this chapter).

**§301-50.5 What is my liability if I do not use my agency’s TMS or the E-Gov Travel Service, and an exception has not been approved?**

If you do not have an approved exception under [§§301-50.4](#) or [301-73.104](#) of this chapter, you are responsible for any additional costs resulting from the failure to use the TMS or E-Gov Travel Service, including service fees, cancellation penalties, or other additional costs (*e.g.*, higher airfares, rental car charges, or hotel rates). In addition, your agency may take appropriate disciplinary action.

**§301-50.6 What is an “online self-service booking tool?”**

An online self-service booking tool is an Internet based system that permits travelers to make their own reservations for transportation (*e.g.*, air, rail, and car rental) and lodging. ETS and some agency TMS’s incorporate a self service booking tool.

**§301-50.7 Should I use the online self-service booking tool once ETS is available within my agency?**

Yes, you should use the online self-service booking tool offered by ETS or your agency’s TMS until ETS becomes available to you.

**Note to section [301-50.7](#):** Some extenuating circumstances for which you may not be able to use online self-service booking are (1) when you are attending a conference where the conference sponsor has negotiated with one or more lodging facilities to set aside a specific number of rooms for conference attendees and to ensure that a set aside room is available to you, you are required to book lodging directly with the lodging facility, (2) when your travel is to a remote location and it is not possible to book lodging accommodations through the TMS or ETS, or (3) when such travel arrangements are so complex and circumstance will not allow you to book your travel through an online self-service booking tool.

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## **PART 301-51—PAYING TRAVEL EXPENSES**

**Authority:** 5 U.S.C 5707. [Subpart A](#) is issued under the authority of Sec. 2, Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701 note); 40 U.S.C. 121(c).

**Note to Part 301-51:** Use of the pronouns “I”, “you”, and their variants throughout this part refers to the employee.

### **Subpart A—General**

#### **§301-51.1 What is the required method of payment for official travel expenses?**

You are required to use the Government contractor-issued travel charge card for all official travel expenses unless you have an exemption.

#### **§301-51.2 What official travel expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?**

The Administrator of General Services exempts the following from the mandatory use of the Government contractor-issued travel charge card:

- (a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card;
- (b) Laundry/dry cleaning;
- (c) Parking;
- (d) Transit system at a TDY location;
- (e) Taxi;
- (f) Tips;
- (g) Meals (when use of the card is impractical, e.g., group meals or the Government contractor-issued travel charge card is not accepted);
- (h) Phone calls (when a Government calling card is available for use in accordance with agency policy);
- (i) An employee who has an application pending for the travel charge card;
- (j) Individuals traveling on invitational travel;
- (k) New appointees;
- (l) Relocation allowances prescribed in [Chapter 302](#) of this title, except en-route travel and househunting trip expenses; and
- (m) Employees who travel 5 times or less a year. Even though exempt, agencies have the discretion to issue a travel charge card to such an employee.

#### **§301-51.3 Who in my agency has the authority to grant exemptions from the mandatory use of the Government contractor-issued travel charge card?**

The head of your agency or his/her designee(s) has (have) the authority to grant exemptions from the mandatory use of the Government contractor-issued travel charge card.

#### **§301-51.4 If my agency grants an exemption, does that prevent me from using the card on a voluntary basis?**

No, an exemption from use would not prevent you from using the Government contractor-issued travel charge card on a voluntary basis in accordance with your agency’s policy.

#### **§301-51.5 How may I pay for official travel expenses if I receive an exemption from use of the Government contractor-issued travel charge card?**

If you receive an exemption from use of the Government contractor-issued travel charge card, your agency may authorize one or a combination of the following methods of payment:

- (a) Personal funds, including cash or personal charge card;
- (b) Travel advances; or
- (c) Government Transportation Request (GTR).

**Note to §301-51.5:** City pair contractors are not required to accept payment by the methods in [paragraph \(a\)](#) or [\(b\)](#) of this section.

#### **§301-51.6 For what purposes may I use the Government contractor-issued travel charge card while on official travel?**

You are required to use the Government contractor-issued travel charge card for expenses directly related to your official travel.

#### **§301-51.7 May I use the Government contractor-issued travel charge card for personal reasons while on official travel?**

No, you may not use the Government contractor-issued travel charge card for personal reasons while on official travel.

#### **§301-51.8 What are the consequences if I misuse the Government contractor-issued travel charge card on official travel?**

Your agency may take appropriate disciplinary action if you misuse the Government contractor-issued travel charge card according to internal agency policies and procedures.

### **Subpart B—Paying for Common Carrier Transportation**

#### **§301-51.100 What method of payment must I use to procure common carrier transportation?**

You must use a Government contractor-issued individually billed travel card, centrally billed account, or GTR to procure contract passenger transportation services. For all other com-

**§301-51.101****FEDERAL TRAVEL REGULATION**

mon carrier transportation, you must use one of the methods specified in the following table:

For passenger transportation services costing	You must use	Unless
(a) \$10 or less, and air excess baggage charges of \$15 or less for each leg of a trip.	A Government contractor-issued individually billed travel card or centrally billed account.	Use of the Government contractor-issued individually billed travel card is not accepted, its use is impracticable or special circumstances justify the use of a GTR.
(b) More than \$10, but not more than \$100.	A Government contractor-issued individually billed travel card, centrally billed account, or GTR	None of the other methods are practicable, you may use cash.
(c) More than \$100	Only a Government contractor-issued individually billed travel card, centrally billed account, or GTR.	Your agency authorizes you to use a reduced fare for group, charter, or excursion arrangements or under emergency circumstances where the use of other methods is not possible.

**§301-51.101 Which payment methods are considered the equivalent of cash?**

Use of one of the following payment methods of this section to procure common carrier transportation is considered the equivalent of cash and you must comply with the rules in 41 CFR 102-118.50 that limit the use of cash for such purposes.

- (a) Personal credit cards;
- (b) Cash withdrawals obtained from an ATM using a Government contractor-issued individually billed travel card; and
- (c) Checks, both personal and travelers (including those obtained through a travel payment system services program).

**§301-51.102 How is my transportation reimbursement affected if I make an unauthorized cash purchase of common carrier transportation?**

If you are a new employee or an invitational or infrequent traveler who is unaware of proper procedures for purchasing common carrier transportation, your agency may allow reimbursement for the full cost of the transportation. In all other instances, your reimbursement will be limited to the cost of such transportation using the authorized method of payment.

**§301-51.103 What is my liability if I lose a GTR?**

You are liable for any Government expenditure that is caused by your negligence in safeguarding the GTR or tickets received in exchange for the GTR. To avoid liability, immediately report a lost or stolen GTR to your administrative office. If the lost or stolen GTR shows the carrier service desired, and point of origin, promptly notify in writing the named carrier and other local initial carriers. Do not use a GTR that is recovered after having been reported as lost or stolen. Instead, report the recovered GTR to your administrative office.

**Subpart C—Receiving Travel Advances****§301-51.200 For what expenses may I receive a travel advance?**

<b>For</b>	<b>You may receive an advance</b>
(a) Cash transaction expenses ( <i>i.e.</i> , expenses that as a general rule cannot be charged and must be paid using cash, a personal check, or travelers check). <ul style="list-style-type: none"> <li>(1) M&amp;IE covered by the per diem allowance or actual expenses allowance;</li> <li>(2) Miscellaneous transportation expenses such as transit systems and taxi fares; parking fees; ferry fees; bridge, road, and tunnel fees; and aircraft parking, landing, and tie-down fees;</li> <li>(3) Gasoline and other variable expenses covered by the mileage allowance for advantageous use of a privately owned automobile for official business; and</li> <li>(4) Other authorized miscellaneous expenses that cannot be charged using a Government contractor-issued charge card and for which a cost can be estimated.</li> </ul>	Any time you are on official travel.
(b) Non-cash transaction expenses (e.g., lodging, common carrier, advance payment of discounted conference registration fee).	Only in the following situations: <ul style="list-style-type: none"> <li>(1) Government contractor-issued charge card not expected to be accepted.</li> <li>(2) Government contractor-issued charge card issuance denied. Your agency has decided not to provide you a Government contractor-issued individually billed travel card.</li> <li>(3) Official change of station. Your agency determines that use of a Government contractor-issued individually billed travel card would not be feasible incident to a transfer, particularly a transfer to another agency.</li> <li>(4) Financial hardship would be incurred.</li> </ul>

**§301-51.201 What is the maximum amount that my agency may advance?**

The amount your agency advances you may not exceed the following amounts:

<b>For</b>	<b>The maximum amount your agency may advance is</b>
Cash transaction expenses	The estimated amount of your cash transaction expenses. (For M&IE, your advance is limited to the M&IE rate under the lodgings-plus per diem method.)
Non-cash transaction expenses (See <a href="#">§301-51.200(b)</a> ).	Generally zero. However, your agency may advance up to the full amount of your expected non-cash transaction expenses for an individual trip (or not to exceed a 45-day period for an open authorization) in accordance with <a href="#">§301-51.200(b)</a> .

**§301-51.202 When must I account for my advance?**

You must file a travel claim which accounts for your advance after completion of your assignment, in accordance with your agency's policy. If you are in a continuous travel status (e.g., an auditor or inspector) or if you submit periodic reimbursement vouchers on an individual trip authorization, your agency may reimburse you the full amount of your travel expenses without any deduction of your advance until such time as you file a final voucher. If the amount advanced is less than the amount of the voucher on which it is deducted, you will be reimbursed the net amount. If the advance exceeds the reimbursable amount, you must immediately refund the excess.

**§301-51.203 What must I do about my advance if my trip is canceled or postponed indefinitely?**

Promptly notify the appropriate agency officials and refund any monies advanced in connection with the authorized travel.

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**PART 301-52—CLAIMING REIMBURSEMENT**

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2., Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701 note).

**§301-52.1 Must I file a travel claim?**

Yes.

**§301-52.2 What information must I provide in my travel claim?**

You must provide the following:

(a) An itemized list of expenses and other information (specified in the listing of required standard data elements contained in [Appendix C](#) of this chapter, and any additional information your agency may specifically require), except:

(1) You may aggregate official travel-related expenses incurred at the TDY location for authorized telephone calls, transit system fares, and parking meter fees, except any individual expenses costing over \$75 must be listed separately;

(2) When you are authorized lodgings-plus per diem, you must state the M&IE allowance on a daily basis;

(3) When you are authorized a reduced per diem, you must state the reduced rate your agency authorizes on a daily basis; and

(4) When your agency limits M&IE reimbursement to the prescribed maximum M&IE for the locality concerned, you must state the reduced rate on a daily basis.

(5) Your agency may or may not require itemization of M&IE when reimbursement is limited to either the maximum M&IE locality rate or a reduced M&IE rate is authorized.

(b) The type of leave and the number of hours of leave for each day;

(c) The date of arrival and departure from the TDY station and any non-duty points visited when you travel by an indirect route other than a stopover to change planes or embark/dembark passengers;

(d) A signed statement, “I hereby assign to the United States any rights I may have against other parties in connection with any reimbursable carrier transportation charges described herein,” when you use cash to pay for common carrier transportation.

**§301-52.3 Am I required to file a travel claim in a specific format and must the claim be signed?**

As soon as your agency fully deploys the E-Gov Travel Service (ETS), you must use the ETS to file all your travel claims. (Agencies are required to fully deploy the ETS no later than September 30, 2006.) Until that time, you must file your travel claim in the format prescribed by your agency. If the prescribed travel claim is hardcopy, the claim must be signed in ink. Any alterations or erasures to your hardcopy travel claim must be initialed. If your agency has electronic processing, use your electronic signature where required.

**§301-52.4 What must I provide with my travel claim?**

You must provide:

(a) Evidence of your necessary travel authorizations including any necessary special authorizations;

(b) Receipts for:

(1) Any lodging expense, except when you are authorized a fixed reduced per diem allowance;

(2) Any other expense costing over \$75. If it is impracticable to furnish receipts in any instance as required by this subtitle, the failure to do so must be fully explained on the travel voucher. Mere inconvenience in the matter of taking receipts will not be considered; and

(3) Receipts must be retained for 6 years and 3 months as prescribed by the National Archives and Records Administration (NARA) under General Records Schedule 6, paragraph number 1 (<http://www.archives.gov/records-mgmt/ardor/grs06.html>).

**§301-52.5 Is there any instance where I am exempt from the receipt requirement in §301-52.4?**

Yes, your agency may exempt an expenditure from the receipt requirement because the expenditure is confidential.

**§301-52.6 How do I submit a travel claim?**

You must submit your travel claim in accordance with administrative procedures prescribed by your agency.

**§301-52.7 When must I submit my travel claim?**

Unless your agency administratively requires you to submit your travel claim within a shorter timeframe, you must submit your travel claim as follows:

(a) Within 5 working days after you complete your trip or period of travel; or

(b) Every 30 days if you are on continuous travel status.

**§301-52.8 May my agency disallow payment of a claimed item?**

Yes, if you do not:

(a) Provide proper itemization of an expense;

(b) Provide receipt or other documentation required to support your claim; and

(c) Claim an expense which is not authorized.

**§301-52.9 What will my agency do when it disallows an expense?**

Your agency will disallow your claim for that expense, issue you a notice of disallowance, and pay your claim for those items which are not disallowed.

**§301-52.10 May I challenge my agency's disallowance of my claim?**

Yes, you may request reconsideration of your claim if you have additional facts or documentation to support your request for reconsideration.

**§301-52.11 What must I do to challenge a disallowed claim?**

You must:

- (a) File a new claim.
- (b) Provide full itemization for all disallowed items reclaimed.
- (c) Provide receipts for all disallowed items reclaimed that require receipts, except that you do not have to provide a receipt if your agency already has the receipt.
- (d) Provide a copy of the notice of disallowance.
- (e) State the proper authority for your claim if you are challenging your agency's application of the law or statute.
- (f) Follow your agency's procedures for challenging disallowed claims.
- (g) If after reconsideration by your agency your claim is still denied, you may submit your claim for adjudication to the GSA Board of Contract Appeals in accordance with 48 CFR part 6104.

**§301-52.12 What happens if I attempt to defraud the Government?**

- (a) You forfeit reimbursement pursuant to 28 U.S.C. 2514; and
- (b) You may be subject under 18 U.S.C. 287 and 1001 to one, or both, of the following:
  - (1) A fine of not more than \$10,000, or
  - (2) Imprisonment for not more than 5 years.

**§301-52.13 Should I keep itemized records of my expenses while on travel?**

Yes. You will find it helpful to keep a record of your expenses by date of the expense to aid you in preparing your travel claim or for tax purposes.

**§301-52.14 What must I do with any travel advance outstanding at the time I submit my travel claim?**

You must account for the travel advance in accordance with your agency's procedures.

**§301-52.15 What must I do with any passenger coupon for transportation costing over \$75, purchased with cash?**

You must submit the passenger coupons to your agency in accordance with your agency's procedures.

**§301-52.16 What must I do with any unused tickets, coupons, or other evidence of refund?**

You must submit any unused tickets, coupons, or other evidence of refund to your agency in accordance with your agency's procedures.

**§301-52.17 Within how many calendar days after I submit a proper travel claim must my agency reimburse my allowable expenses?**

Your agency must reimburse you within 30 calendar days after you submit a proper travel claim to your agency's designated approving office. Your agency must ensure that it uses a satisfactory recordkeeping system to track submission of travel claims. For example, travel claims submitted by mail, in accordance with your agency's policy, could be annotated with the time and date of receipt by your agency. Your agency could consider travel claims electronically submitted to the designated approving office as submitted on the date indicated on an e-mail log, or on the next business day if submitted after normal working hours. However, claims for the following relocation allowances are exempt from this provision:

- (a) Transportation and storage of household goods and professional books, papers and equipment;
- (b) Transportation of mobile home;
- (c) Transportation of a privately owned vehicle;
- (d) Temporary quarters subsistence expense, when not paid as lump sum;
- (e) Residence transaction expenses;
- (f) Relocation income tax allowance;
- (g) Use of a relocation services company;
- (h) Home marketing incentive payments; and
- (i) Allowance for property management services.

**§301-52.18 Within how many calendar days after I submit a travel claim must my agency notify me of any error that would prevent payment within 30 calendar days after submission?**

Your agency must notify you as soon as practicable after you submit your travel claim of any error that would prevent payment within 30 calendar days after submission and must provide the reason(s) why your travel claim is not proper. However, not later than May 1, 2002, agencies must achieve a maximum time period of seven working days for notifying you that your travel claim is not proper.

**§301-52.19 Will I receive a late payment fee if my agency fails to reimburse me within 30 calendar days after I submit a proper travel claim?**

Yes, your agency must pay you a late payment fee, in addition to the amount due you, for any proper travel claim not reimbursed within 30 calendar days of your submission of it to the approving official.

**§301-52.20 How are late payment fees calculated?**

Your agency must either:

- (a) Calculate late payment fees using the prevailing Prompt Payment Act Interest Rate beginning on the 31<sup>st</sup> day

after submission of a proper travel claim and ending on the date on which payment is made; or

(b) Reimburse you a flat fee of not less than the prompt payment amount, based on an agencywide average of travel claim payments; and

(c) In addition to the fee required by [paragraphs \(a\)](#) and [\(b\)](#) of this section, your agency must also pay you an amount equivalent to any late payment charge that the card contractor would have been able to charge you had you not paid the bill.

**§301-52.21 Is there a minimum amount the late payment fee must exceed before my agency will pay it to me?**

Yes, a late payment fee will only be paid when the computed late payment fee is \$1.00 or greater.

**§301-52.22 Will any late payment fees I receive be reported as wages on a Form W-2?**

No, the Internal Revenue Service (IRS) has determined that the late payment fee is in the nature of interest (compen-

sation for the use of money). Your agency will report payments in accordance with IRS guidelines.

**§301-52.23 Is the additional fee, which is equal to any late payment charge that the card contractor would have been able to charge had I not paid the bill, considered income?**

Yes, your agency will report this payment as additional wages on Form W-2.

**§301-52.24 Does mandatory use of the Government contractor-issued travel charge card change my obligation to pay my travel card bill by the due date?**

No, mandatory use of the Government contractor-issued travel charge card does not relieve you of your obligation to pay your bill in accordance with your cardholder agreement.

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## PART 301-53—USING PROMOTIONAL MATERIALS AND FREQUENT TRAVELER PROGRAMS

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 1353.

### **§301-53.1 To whom do the pronouns “I,” “you”, and their variants refer throughout this part?**

The pronouns “I”, “you”, and their variants throughout this part refer to the employee.

### **§301-53.2 What may I do with promotional benefits or materials I receive from a travel service provider?**

Any promotional benefits or materials received from a travel service provider in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government.

**Note to §301-53.2:** Promotional benefits or materials you receive from a travel service provider in connection with your planning and/or scheduling an official conference or other group travel (as opposed to performing official travel yourself) are considered property of the Government, and you may only accept the benefits or materials on behalf of the Federal Government (see [§301-74.1\(d\)](#) of this chapter).

### **§301-53.3 How may I use promotional materials and frequent traveler benefits?**

Promotional materials and frequent traveler benefits may be used as follows:

(a) You may use frequent traveler benefits earned on official travel to obtain travel services for a subsequent official travel assignment(s); however, you may also retain such benefits for your personal use, including upgrading to a higher class of service while on official travel.

(b) If you are offered such benefits as a result of your role as a conference planner or as a planner for other group travel,

you may not retain such benefits for your personal use (see [§301-53.2](#) of this chapter). Rather, you may only accept such benefits on behalf of the Federal Government. Such accepted benefits may only be used for official Government business.

### **§301-53.4 May I select travel service providers for which my agency is not a mandatory user in order to maximize my frequent traveler benefits?**

No, you may not select a traveler service provider based on whether it provides frequent traveler benefits. You must use the travel service provider for which your agency is a mandatory user. This includes contract passenger transportation services and travel management services. You may not choose a travel service provider to gain frequent traveler benefits for personal use. (Also see [§§301-10.109](#) and [301-10.110](#) of this chapter.)

### **§301-53.5 Are there exceptions to the mandatory use of contract city-pair fares and an agency’s travel management service?**

Yes, the exceptions are in accordance with [§§301-10.106](#) and [301-10.108](#) of this chapter for the mandatory use of a contract city-pair fare, and [§301-73.103](#) of this chapter for the mandatory use of a travel management service.

### **§301-53.6 Is a denied boarding benefit considered a promotional item for which I may retain compensation received from an airline whether voluntary or involuntary?**

A denied boarding benefit (e.g., cash, free ticket coupon) is not a promotional item given by an airline. See the provisions of [§301-10.116](#) of this chapter when an airline denies you a seat (involuntary) and [§301-10.117](#) of this chapter when you vacate your seat (voluntary).

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# AMENDMENT 2007–05 OCTOBER 31, 2007

Chapter 301—Temporary Duty (TDY) Travel Allowances

Part 301-54—Collection of Undisputed Delinquent Amounts Owed to the Contractor Issuing the Individually Billed Travel Charge Card

**§301-54.102**

## PART 301-54—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701 note).

### Subpart A—General Rules

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

#### §301-54.1 Is my agency allowed to collect undisputed delinquent amounts that I owe to a Government travel charge card contractor?

Yes, upon written request from the contractor, your agency may collect, from your disposable pay, any undisputed delinquent amounts that you owe to a Government travel charge card contractor.

#### §301-54.2 What is disposable pay?

Disposable pay is your compensation remaining after the deduction from your earnings of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as savings bonds, charitable contributions, etc. Deductions may be made from any type of pay you receive from your agency, e.g., basic pay, special pay, retirement pay, or incentive pay.

### Subpart B—Policies and Procedures

**Note to Subpart B:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

#### §301-54.100 Are there any due process requirements with which my agency must comply before collecting undisputed delinquent amounts on behalf of the charge card contractor?

Yes, your agency must:

(a) Provide you with written notice of the type and amount of the claim, the intention to collect the claim by deduction from your disposable pay, and an explanation of your rights as a debtor;

(b) Give you the opportunity to inspect and copy their records related to the claim;

(c) Allow an opportunity for a review within the agency of its decision to collect the amount; and

(d) Provide you with an opportunity to make a written agreement with the contractor to repay the delinquent amount of the claim.

#### §301-54.101 Can my agency initiate collection of undisputed delinquent amounts if it has not reimbursed me for amounts reimbursable under the applicable travel regulations?

No, your agency may only collect undisputed delinquent amounts for which you have been reimbursed under the applicable travel regulations. However, if you have not submitted a proper travel claim within the timeframe requirements of [§301-52.7](#) of this chapter, and there are no extenuating circumstances, your agency may collect the undisputed delinquent amounts based on the amounts charged on the travel charge card.

#### §301-54.102 What is the maximum amount my agency may deduct from my disposable pay?

As set forth in Public Law 105-264, 112 Stat. 2350, October 19, 1998, the maximum amount your agency may deduct from your disposable pay is 15 percent a pay period, unless you agree in writing to a larger percentage.

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## **SUBCHAPTER D—AGENCY RESPONSIBILITIES**

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**PART 301-70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS****Subpart A—General Policies and Procedures**

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701, note), OMB Circular No. A-126, revised May 22, 1992, and OMB Circular No. A-123, Appendix B, revised January 15, 2009.

**§301-70.1 How must we administer the authorization and payment of travel expenses?**

When administering the authorization and payment of travel expenses, you—

- (a) Must limit the authorization and payment of travel expenses to travel that is necessary to accomplish your mission in the most economical and effective manner, under rules stated throughout this chapter;
- (b) Should give consideration to budget constraints, adherence to travel policies, and reasonableness of expenses;
- (c) Should always consider alternatives, including teleconferencing, prior to authorizing travel; and
- (d) Must require employees to use the ETS to process travel authorizations and claims for travel expenses once you migrate to the ETS, but no later than September 30, 2006, unless an exception has been granted under [§§301-73.102](#) or [301-73.104](#) of this chapter.

**Subpart B—Policies and Procedure Relating to Transportation****§301-70.100 How must we administer the authorization and payment of transportation expenses?**

You must:

- (a) Limit authorization and payment of transportation expenses to those expenses that result in the greatest advantage to the Government;
- (b) Ensure that travel is by the most expeditious means practicable.

**§301-70.101 What factors must we consider in determining which method of transportation results in the greatest advantage to the Government?**

In selecting a particular method of transportation you must consider:

- (a) The total cost to the Government, including per diem, overtime, lost worktime, actual transportation cost, total distance of travel, number of points visited, the number of travelers and energy conservation. As stated in 5 U.S.C. 5733, “travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel.”

(b) Travel by common carrier (air, rail, bus) is considered the most advantageous method to perform official travel. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would interfere with the performance of official business or

impose an undue hardship upon the traveler, or when the total cost by common carrier exceeds the cost by another method of transportation. A determination that another method of transportation is more advantageous to the Government than common carrier will not be made on the basis of personal preference or inconvenience to the traveler.

**§301-70.102 What governing policies must we establish for authorization and payment of transportation expenses?**

You must establish policies and procedures governing:

- (a) Who will determine what method of transportation is more advantageous to the Government;
- (b) Who will approve any of the following:
  - (1) Use of other than coach-class transportation accommodations for air and rail under [§§301-10.123](#) and [301-10.162](#), and lowest first-class accommodations for ship under [§301-10.183](#) of this chapter.
  - (2) Use of a special-reduced fare or reduced group or charter fare;
  - (3) Use of an extra-fare train service under [§301-10.164](#);
  - (4) Use of ship service;
  - (5) Use of a foreign ship;
  - (6) Use of a foreign air carrier;
- (c) When you will:
  - (1) Require the use of a Government vehicle;
  - (2) Allow the use of a Government vehicle; and
  - (3) Prohibit the use of a Government vehicle;
- (d) When you will consider use of a POV advantageous to the Government, such as travel to/from common carrier terminals, or transportation to a TDY location;
- (e) Procedures for claiming POV reimbursement;
- (f) When you will allow use of a special conveyance (e.g., commercially rented vehicles);
- (g) What procedures an employee must follow when he/she travels by an indirect route or interrupts travel by a direct route;
- (h) Whether to reimburse the full amount of transportation costs in conjunction with TDY or only the amount by which transportation costs exceed the employee’s normal costs for transportation between:
  - (1) Office or duty point and another place of business;
  - (2) Places of business; or
  - (3) Residence and place of business other than office or duty point;
- (i) Develop and issue internal guidance on what specific mission criteria justify approval of the use of other than coach-class transportation under [§§301-10.123\(a\)\(4\)](#), [§301-10.123\(b\)\(9\)](#), and [§301-10.162\(e\)](#) or the use of other than lowest first-class under [§301-10.183\(d\)](#). The justification criteria shall be entered in the remarks section of the traveler’s travel authorization;

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- (j) Develop and publish internal guidance regarding what constitutes a rest period upon arrival at a temporary duty location; and
- (k) Develop and publish internal guidance regarding Seating Upgrade Programs in coach-class (see [§301-10.124](#)).

### §301-70.103 In what circumstance may we authorize use of ship service?

Travel by ship is not generally regarded as advantageous. You must determine that the advantages accruing from the use of ocean transportation offset the higher costs associated with ship travel, *i.e.*, per diem, transportation, and lost worktime.

### §301-70.104 What factors should we consider in determining whether to require an employee to commit to the use of a Government automobile?

You should consider:

- (a) The advantages of using a Government automobile. Such advantages may include, but are not limited to:
  - (1) Full utilization or availability of fleet vehicles;
  - (2) Lower cost;
  - (3) Official presence.
- (b) The type of travel the employee performs. You should require such a commitment when an employee or group of employees requires the use of an automobile for official travel on a frequent or repetitive basis.

### §301-70.105 May we prohibit an employee from using a POV on official travel?

No, but if the employee elects to use a POV instead of an alternative form of transportation you authorize, you must:

- (a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation; and

(b) Charge leave for any duty hours that are missed as a result of travel by POV.

## Subpart C—Policies and Procedures Relating to Per Diem Expenses

### §301-70.200 What governing policies must we establish for authorization and payment of per diem expenses?

You must establish policies and procedures governing:

- (a) Who will authorize a rest period;
- (b) Circumstances allowing a rest period during prolonged travel (see [§301-11.20](#) for minimum standards);
- (c) If, and in what instances, you will allow an employee to return to his/her official station on non-workdays;
- (d) Who will determine if an employee will be allowed to return to his/her official station on a case by case basis;
- (e) Who will determine in what instances you will pay a reduced per diem rate;
- (f) Who will determine, and in what instances, actual expenses are appropriate in each individual case; and

- (g) Who will determine, and in what instances, an employee will be able to claim the full M&IE allowance even though meals are furnished to the employee by the Government, in accordance with [§301-11.18\(b\)](#) and [§301-11.18\(c\)](#).

## Subpart D—Policies and Procedures Relating to Miscellaneous Expenses

### §301-70.300 How should we administer the authorization and payment of miscellaneous expenses?

You should limit payment of miscellaneous expenses to only those expenses that are necessary and in the interest of the Government.

### §301-70.301 What governing policies must we establish for payment of miscellaneous expenses?

You must establish policies and procedures governing:

- (a) Who will determine when excess baggage is necessary for official travel;
- (b) When you will pay for communications services, including whether you will pay for a telephone call to the employee's home or place where the employee's dependent children are;
- (c) Who will determine if other miscellaneous expenses are appropriate for reimbursement in connection with official travel.

## Subpart E—Policies and Procedures Relating to Travel of an Employee with a Disability or Special Need

### §301-70.400 How should we authorize and administer the payment of additional travel expenses for an employee with a disability or special need?

You should authorize and administer the payment to reasonably accommodate employee(s) with disabilities in accordance with the Rehabilitation Act of 1973, as amended, (29 U.S.C. 701-7961) and 5 U.S.C. 3102 and [Part 301-13](#) of this chapter. An employee with a special need should be treated the same as an employee with a disability. You must determine that additional travel expenses are necessary to accommodate the employee's needs.

### §301-70.401 What governing policies and procedures must we establish regarding travel of an employee with a disability or special need?

You must establish the policies and procedures governing:

- (a) Who will determine if an employee has a disability or special need which requires accommodation, including when documentation is necessary under [§§301-10.123](#), [301-10.124](#), [301-10.162](#), and [301-10.183](#), and when a determination may be based on a clearly visible physical condition; and

(b) Who will determine how to reasonably accommodate the employee and what expenses you will pay.

**Subpart F—Policies and Procedures for Emergency Travel of Employee Due to Illness or Injury**

**§301-70.500 What governing policies and procedures should we establish relating to emergency travel?**

Each agency must determine:

- (a) When you will authorize emergency travel under Part 301-30;
- (b) Who will determine if the employee's situation warrants payment for emergency travel expenses;
- (c) When and by whom travel to an alternate location other than official station or point of interruption will be authorized; and
- (d) Who will determine when and if the definition of family may be extended and to whom.

**§301-70.501 Does per diem continue when an employee interrupts a travel assignment because of an incapacitating illness or injury?**

Yes, when an employee interrupts a travel assignment because of an incapacitating illness or injury and takes leave (annual or sick), per diem will be allowed, not to exceed the maximum rate for the location where the interruption occurs, for a reasonable period, normally not to exceed 14 calendar days (including fractional days) for any one period of absence. You may approve a longer period if justified.

**§301-70.502 Are there any limitations to the payment of these expenses?**

Yes, there are limitations to the payment of these expenses. Per diem is not payable, or if paid, must be collected from the employee when—

- (a) The employee is confined to a hospital or medical facility that is within the proximity of the official station or that is the same one the employee would have been admitted to if the illness or injury had occurred while at the official station; and/or
- (b) The Government provides or reimburses the employee for hospitalization under any Federal statute (including hospitalization in a Department of Veterans Affairs (VA) medical center or military hospital) other than 5 U.S.C. 8901-8913 (Federal Employees Health Benefits program).

**§301-70.503 What additional emergency expenses should we allow?**

When an employee discontinues a TDY assignment before its completion due to an incapacitating illness or injury, you may pay—

- (a) Transportation and per diem expenses for travel to an alternate location to receive medical treatment;

(b) Transportation and per diem expenses to return to the official station; and

(c) Transportation costs of a medically necessary attendant.

**§301-70.504 When the employee is able to travel, should we continue the use of the existing travel authorization?**

Not if the interrupted trip was authorized under a trip by trip authorization. If, when the employee's health has been restored, the agency decides that it is in the Government's interest to return the employee to the TDY location, such return is considered to be a new travel assignment at Government expense. An interrupted trip authorized under an open or limited open authorization may be continued without further authorization.

**§301-70.505 May any travel costs be reimbursed if the employee travels to an alternate location for medical treatment?**

Yes. When an employee, interrupts a TDY assignment because of an incapacitating illness or injury and takes leave of absence for travel to an alternate location to obtain medical services and returns to the TDY assignment, you may reimburse certain excess travel costs provided in this section. Specifically, you may reimburse the excess (if any) of actual costs of travel from the point of interruption to the alternate location and return to the TDY assignment, over the constructive costs of round-trip travel between the official station and the alternate location. The nearest hospital or medical facility capable of treating the employee's illness or injury will not, however, be considered an alternate location.

**Note to §301-70.505:** An alternate location is a destination other than the employee's official station or the point of interruption.

**§301-70.506 How do we define actual cost and constructive cost when an employee interrupts a travel assignment because of an incapacitating illness or injury?**

(a) Actual cost of travel will be the transportation expenses incurred and en route per diem for the travel as actually performed from the point of interruption to the alternate location and from the alternate location to the TDY assignment. No per diem is allowed for time spent at the alternate location if confined to a medical facility.

(b) Constructive cost is the sum of transportation expenses the employee would reasonably have incurred for round-trip travel between the official station and the alternate location plus per diem calculated for the appropriate en route travel time.

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**§301-70.507 May we authorize per diem if an employee discontinues a TDY assignment because of a personal emergency situation?**

Yes. Expenses of appropriate transportation and per diem while en route may be allowed, with the approval of an appropriate agency official, for return travel from the point of interruption to the official station.

**§301-70.508 How do we handle reimbursement if the employee travels to an alternate location and returns to the TDY location because of a personal emergency situation?**

You may reimburse certain excess travel costs (transportation and en route per diem) to the same extent as provided in [§301-70.501](#) for incapacitating illness or injury to the employee.

**§301-70.509 What factors must we consider in expanding the definition of family for emergency travel purposes?**

Agencies must consider on a case by case basis:

- (a) The extent of the emergency;
- (b) The employee's relationship to the individual involved in the emergency; and
- (c) The degree of the employee's responsibility for the individual involved in the emergency.

**Subpart G—Policies and Procedures Relating to Threatened Law Enforcement/Investigative Employees**

**§301-70.600 What governing policies and procedures must we establish related to threatened law enforcement/investigative employees?**

You must establish policies and procedures governing:

- (a) When you will pay transportation and subsistence expenses of threatened law enforcement/investigative employees, under [Part 301-31](#) of this chapter;
- (b) Who will determine the degree and seriousness of threat in each individual case;
- (c) Who will determine what protective action should be taken, including the location and duration of temporary lodging;
- (d) Who will reevaluate the situation to determine whether protective action should be continued or discontinued and how often;
- (e) What procedures must be followed to obtain authorization of transportation and subsistence expenses for threatened law enforcement/investigative employees; and
- (f) What special procedures must an employee follow to claim expenses.

**§301-70.601 What factors should we consider in determining whether to authorize payment of transportation and subsistence expenses for threatened law enforcement/investigative employees?**

You should consider:

- (a) *The degree and seriousness of the threat.* You should pay transportation and subsistence expenses only if a situation poses a legitimate serious threat to life.

(b) *The option of relocating the employee.* You should consider whether relocating the employee permanently would be advantageous given the specific nature of the threat, the continued disruption of the family, and the alternative costs of a change of official station.

**§301-70.602 How often must we reevaluate the payment of transportation and subsistence expenses to a threatened law enforcement/investigative employee?**

You must reevaluate the situation every 30 days based on the same factors you considered when you first authorized the payment of the expenses.

**Subpart H—Policies and Procedures Relating to Mandatory Use of the Government Contractor-Issued Travel Charge Card for Official Travel**

**§301-70.700 Must our employees use a Government contractor-issued travel charge card for official travel expenses?**

Yes, your employees must use a Government contractor-issued travel charge card for official travel expenses unless:

- (a) A vendor does not accept the travel charge card;
- (b) The Administrator of General Services has granted an exemption (see [§301-70.704](#)); or
- (c) Your agency head or his/her designee has granted an exemption.

**§301-70.701 Who has the authority to grant exemptions to mandatory use of Government contractor-issued travel charge card for official travel?**

(a) The Administrator of General Services will exempt any payment, person, type or class of payments, or type or class of personnel in any case in which—

- (1) It is in the best interest of the United States to do so;
- (2) Payment through a travel charge card is impractical or imposes unreasonable burdens or costs on Federal employees or Federal agencies; or

(3) The Secretary of Defense or the Secretary of Homeland Security(for the Coast Guard) requests an exemption for the members of their uniformed services.

- (b) The head of a Federal agency or his/her designee(s) may exempt any payment, person, type or class of payments,

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or type or class of agency personnel if the exemption is determined to be necessary in the interest of the agency.

**§301-70.702 Must we notify the Administrator of General Services when we grant an exemption?**

Yes, you must notify the Administrator of General Services (Attention: MTT), 1800 F Street, NW, Washington, DC 20405, in writing within 30 days after granting the exemption, stating the reasons for the exemption.

**§301-70.703 If we grant an exemption, does that prevent the employee from using the card on a voluntary basis?**

No, an exemption from use would not prevent the employee from using the Government contractor-issued travel charge card for official travel expenses on a voluntary basis in accordance with your policies.

**§301-70.704 What expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?**

The Administrator of General Services exempts the following from the mandatory use of the Government contractor-issued travel charge card:

- (a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card;
- (b) Laundry/dry cleaning;
- (c) Parking;
- (d) Transit system at a TDY location;
- (e) Taxi;
- (f) Tips;
- (g) Meals (only when use of the card is impractical, i.e., group meals or the Government contractor-issued travel charge card is not accepted);
- (h) Phone calls (when a Government calling card is available for use in accordance with agency policy);
- (i) An employee who has an application pending for the travel charge card;
- (j) Individuals traveling on invitational travel; and
- (k) New appointees.

**Note to §301-70.704:** Relocation allowances prescribed in Chapter 302 of this title, except en-route travel and house-hunting trip expenses are not covered by this requirement.

**§301-70.705 What methods of payment for official travel expenses may we authorize when an exemption from use of the Government contractor-issued travel charge card is granted?**

When you grant an exemption from use of the Government contractor-issued travel charge card, you may authorize one or a combination of the following methods of payment:

- (a) Personal funds, including cash or personal charge card;
- (b) Travel advances; or
- (c) Government Transportation Request (GTR).

**Note to §301-70.705:** City pair contractors are not required to accept payment by the methods in paragraph (a) or (b) of this section.

**§301-70.706 For what purposes may an employee use the Government contractor-issued travel charge card while on official travel?**

An employee is required to use the Government contractor-issued travel charge card for expenses directly related to official travel.

**§301-70.707 May an employee use the Government contractor-issued travel charge card for personal use while on official travel?**

No, an employee may not use the Government contractor-issued travel charge card for personal use while on official travel.

**§301-70.708 What actions may we take if an employee misuses the Government contractor-issued travel charge card while on official travel?**

You may take appropriate disciplinary action if an employee misuses the Government contractor-issued travel charge card. Internal agency policies and procedures should define what the agency considers to be misuses of the travel charge card.

**§301-70.709 What can we do to reduce travel charge card delinquencies?**

To reduce travel charge card delinquencies by your employees, you should consider implementing one or more of the following suggestions (this list is not comprehensive; you may adopt other appropriate procedures):

(a) Agency travel program coordinators must be trained and aware of their responsibilities and the delinquency management tools available under your agreement with the travel charge card contractor (internet training is available for the GSA SmartPay™ Travel Charge Card at: <http://www.gsa.gov/traveltraining>).

(b) Ensure that managers and supervisors are provided monthly delinquency and questionable charges report.

(c) Periodically, but at least once a year, verify that card-holders are still current employees.

(d) For inactive accounts (cards not used within 6 months, one year, etc., reduce card limit to \$1, increase dollar limit when necessary).

(e) Work with the charge card contractor to block certain high-risk category codes (e.g., department stores, automobile dealerships, specialty stores), etc.

(f) Review ATM cash withdrawals for reasonableness and association with official travel.

(g) Implement a salary offset program. (See Part 301-76 of this chapter).

(h) Implement split disbursement in your travel voucher system, so that an employee may authorize you to

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make certain payments directly to the charge card contractor on the employee's behalf.

(i) Refer potential fraud cases to your agency IG for investigation.

(j) For some helpful do's and don'ts for travel cardholders, see GSA publication (Card-F001) entitled "Helpful Hints for Travel Cardholders". This publication is available on the Internet at <http://fss.gsa.gov/services/gsa-smartpay>. Click on "Publications and Presentations" and under "Publications," click on "Helpful Hints for Travel Card Use".

(k) Ensure that employees turn in their travel charge card when they retire or leave the agency.

**Subpart I—Policies and Procedures for Agencies that Authorize Travel on Government Aircraft****§301-70.800 Whom may we authorize to travel on Government Aircraft?**

You may authorize Federal travelers, non-Federal travelers, and any other passengers, as defined in part [300-3](#) of this subtitle, to travel on Government aircraft, subject to the rules in this subpart. Because the taxpayers generally should pay no more than necessary for transportation of travelers, except for required use travel, you may authorize travel on Government aircraft only when a Government aircraft is the most cost-effective mode of travel and the traveler is traveling for Governmental purposes.

**§301-70.801 When may we authorize travel on Government aircraft?**

You may authorize travel on Government aircraft only as follows:

(a) For official travel when—

(1) No scheduled commercial airline service is reasonably available to fulfill your agency's travel requirement (*i.e.*, able to meet the traveler's departure and/or arrival requirements within a 24-hour period, unless you demonstrate that extraordinary circumstances require a shorter period); or

(2) The cost of using a Government aircraft is not more than the cost of the city-pair fare for scheduled commercial airline service or the cost of the lowest available full coach fare if a city-pair fare is not available to the traveler.

(b) For required-use travel, *i.e.*, when the traveler is authorized to use Government aircraft because of bona fide communications needs (e.g., 24-hour secure communications are required) or security reasons (e.g., highly unusual circumstances that present a clear and present danger to the traveler) or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations). Required-use travel may include travel for official, personal, or political purposes, but must be approved in accordance with [§301-10.262\(a\)](#) and [§301-70.803\(a\)](#).

(c) For space available travel when—

(1) The aircraft is already scheduled for use for an official purpose and carrying an official traveler(s) on the aircraft does not cause the need for a larger aircraft or result in more than minor additional cost to the Government; or

(2) The Federal traveler or the dependent of a Federal traveler is stationed by the Government in a remote location not accessible to commercial airline service; or

(3) The traveler is authorized to travel space available under 10 U.S.C. 2648 and regulations implementing that statute.

**§301-70.802 Must we ensure that travel on Government aircraft is the most cost-effective alternative?**

(a) Yes, you must ensure that travel on a Government aircraft is the most cost-effective alternative that will meet the travel requirement. Your designated travel approving official must—

(1) Compare the cost of all travel alternatives, as applicable, that is—

- (i) Travel on a scheduled commercial airline;
- (ii) Travel on a Federal aircraft;
- (iii) Travel on a Government aircraft hired as a commercial aviation service (CAS); and

(iv) Travel by other available modes of

transportation; and

(2) Approve only the most cost-effective alternative that meets your agency's needs.

(3) Consider the cost of non-productive or lost work time while in travel status and certain other costs when comparing the costs of using Government aircraft in lieu of scheduled commercial airline service and other available modes of transportation. Additional information on costs included in the cost comparison may be found in the "U.S. Government Aircraft Cost Accounting Guide," available through the General Services Administration, Office of Governmentwide Policy, MTA, 1800 F Street, N.W., Washington, DC 20405.

(b) The aircraft management office in the agency that owns or hires the Government aircraft must provide your designated travel-approving official with cost estimates for a Government aircraft trip (*i.e.*, a Federal aircraft trip cost or a CAS aircraft trip cost).

(c) When an agency operates a Government aircraft to fulfill a non-travel related governmental function or for required use travel, using any space available for passengers on official travel is presumed to result in cost savings.

**§301-70.803 How must we authorize travel on a Government aircraft?**

You must authorize travel on a Government aircraft as follows:

(a) *For required-use travel.* Your agency must first establish written standards for determining the special circumstances under which it will require travelers to use Government aircraft. Then, following those standards, your agency's senior legal official or his/her principal deputy must

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authorize required-use travel on a trip-by-trip basis in advance and in writing, unless—

(1) The traveler is an agency head, and the President has determined that all of his or her travel, or travel in specified categories, requires the use of Government aircraft; or

(2) Your agency head has determined in writing that all travel, or travel in specified categories, by another traveler requires the use of Government aircraft.

**Note to §301-70.803(a):** In an emergency situation, prior verbal approval for required-use travel with an after-the-fact written authorization is permitted.

(b) *For travel by senior Federal officials.* Your agency's senior legal official or his/her principal deputy must authorize all travel on Government aircraft by senior Federal officials on a trip-by-trip basis, in advance and in writing, except for required use travel authorized under [paragraphs \(a\)\(1\)](#) or [\(a\)\(2\)](#) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted. Senior Federal officials who are crewmembers or qualified non-crewmembers on a flight in which they are also traveling (*i.e.*, being transported from point-to-point) are considered travelers and must be authorized to travel on Government aircraft according to this paragraph.

(c) *For travel by non-Federal travelers.* If you are the sponsoring agency for a non-Federal traveler, your senior legal official or his/her deputy must authorize all travel on Government aircraft by that non-Federal traveler on a trip-by-trip basis, in advance and in writing. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted.

(d) *For all other travel.* (1) Your agency's designated travel approving official (or anyone to whom he/she delegates this authority and who is at least one organizational level above the traveler) must authorize, in advance and in writing, all other travel on Government aircraft (*i.e.*, by passengers, crewmembers, or qualified non-crewmembers) that is not covered in [paragraphs \(a\), \(b\), and \(c\)](#) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's designated travel approving official is permitted. If your agency wishes to issue blanket travel authorizations that authorize travel on Government aircraft, such blanket authorizations must define the circumstances that must be met for using Government aircraft in compliance with this regulation and any additional agency policies. Travel on Government aircraft that does not meet the circumstances specified in the blanket travel authorization must be authorized on a trip-by-trip basis in accordance with this regulation and other applicable agency policies.

(2) When authorizing space available travel (except as authorized under 10 U.S.C. 2648 and regulations implement-

ing that statute), you must ensure that the aircraft management office in the agency that owns or hires the aircraft has certified in writing before the flight that the aircraft is scheduled to be used for a bona fide governmental function. Bona fide governmental functions may include support for official travel. The aircraft management office must also certify that carrying a traveler(s) in space available does not cause the need for a larger aircraft or result in more than minor additional cost to the Government. The aircraft management office must retain this certification for two years. In an emergency situation, prior verbal confirmation of this information with an after-the-fact written certification is permitted.

**§301-70.804 What amount must the Government be reimbursed for travel on a Government aircraft?**

(a) No reimbursement is required for official travel on a Government aircraft.

(b) For personal travel on Government aircraft, reimbursement depends upon which of the following special cases applies:

(1) You must require a traveler on required-use travel to reimburse the Government for the excess of the full coach fare for all flights taken on a trip over the full coach fare for the flights that he/she would have taken had he/she not engaged in personal activities during the trip; and

(2) No reimbursement is required for travel authorized under 10 U.S.C. 2648 and regulations implementing that statute, or when the traveler and his/her dependents are stationed by the Government in a remote location with no access to regularly scheduled commercial airline service.

(c) For political travel on a Government aircraft (*i.e.*, for any trip or part of a trip during which the traveler engages in political activities), you must require that the Government be reimbursed the excess of the full coach fare for all flights taken on the trip over the full coach fare for the flights that the traveler would have taken had he/she not engaged in political activities, except if other law or regulation specifies a different amount (see, e.g., 11 CFR 106.3, "Allocation of Expenses between Campaign and Non-campaign Related Travel"), in which case the amount reimbursed is the amount required by such law or regulation.

**§301-70.805 Must we include special information on a travel authorization for a senior Federal official or a non-Federal traveler who travels on Government aircraft?**

Yes, you must include the following information on a travel authorization for a senior Federal official or a non-Federal traveler:

(a) Traveler's name with indication that the traveler is either a senior Federal official or a non-Federal traveler, whichever is appropriate.

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- (b) The traveler's organization and title or other appropriate descriptive information, e.g., dependent, press, etc.
- (c) Name of the authorizing agency.
- (d) The official purpose of the trip.
- (e) The destination(s).
- (f) For personal or political travel, the amount that the traveler must reimburse the Government (*i.e.*, the full coach fare or appropriate share of that fare).
- (g) For official travel, the comparable city-pair fare (if available to the traveler) or full coach fare if a city-pair fare is not available.

**§301-70.806 What documentation must we retain for travel on Government aircraft?**

You must retain all travel authorizations and cost-comparisons for travel on Government aircraft for two years.

**§301-70.807 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?**

Yes, an agency that authorizes travel on Government aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

**§301-70.808 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?**

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A-126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A-126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A-126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

**Subpart J—Policies and Procedures for Agencies that Own or Hire Government Aircraft for Travel****§301-70.900 May we use our Government aircraft to carry passengers?**

Yes. You may use Government aircraft, *i.e.*, aircraft that you own, borrow, operate as a bailed aircraft, or hire as a com-

mercial aviation service (CAS), to carry Federal and non-Federal travelers, but only in accordance with the rules in 41 CFR 102-33.215 and 102-33.220 and the regulations in this part.

**§301-70.901 Who may approve use of our Government aircraft to carry passengers?**

Your agency head or his/her designee must approve the use of your agency's Government aircraft for travel, *i.e.*, for carrying passengers and any crewmembers or qualified non-crewmembers who are also traveling. This approval must be in writing and may be for recurring travel.

**§301-70.902 Do we have any special responsibilities related to space available travel on our Government aircraft?**

Yes, except for travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, you must certify in writing before carrying passengers on a space available basis on your Government aircraft that the aircraft is scheduled to perform a bona fide governmental function. Bona fide governmental functions may include support for official travel. You must also certify that carrying a passenger in space available does not cause the need for a larger aircraft and does not result in more than minor additional cost to the Government. Your aircraft management office must retain this certification for two years. In an emergency situation, prior verbal approval with an after-the-fact written certification is permitted.

**§301-70.903 What are our responsibilities for ensuring that Government aircraft are the most cost-effective alternative for travel?**

To help ensure that Government aircraft are the most cost-effective alternative for travel, your aircraft management office must calculate the cost of a trip on your aircraft, whether Federal aircraft or CAS aircraft, and submit that information to the traveler's designated travel-approving official upon request. The designated travel-approving official must use that information to compare the cost of using Government aircraft with the cost of scheduled commercial airline service and the cost of using other available modes of transportation. When you operate a Government aircraft to fulfill a non-travel related governmental function or for required use travel, using any space available for passengers on official travel is presumed to result in cost savings. For guidance on how and when to calculate the cost of a trip on Government aircraft, see the "U.S. Government Aircraft Cost Accounting Guide," published by the Aircraft Management Policy Division (MTA), General Services Administration, 1800 F Street, N.W., Washington, DC, 20405.

**§301-70.904 Must travelers whom we carry on Government aircraft be authorized to travel?**

Yes, every traveler on one of your aircraft must have a written travel authorization from an authorizing executive agency, and he/she must present that authorization, before the flight, to the aircraft management office or its representative in the organization that owns or hires the Government aircraft. In addition to all passengers, those crewmembers and qualified non-crewmembers on a flight in which they are also traveling (*i.e.*, being transported from point to point) are considered travelers and must also be authorized to travel on Government aircraft.

**§301-70.905 What documentation must we retain for travel on our Government aircraft?**

(a) You must retain for two years copies of travel authorizations for senior Federal officials and non-Federal travelers who travel on your Government aircraft.

(b) You must also retain for two years the following information for each flight:

- (1) The tail number of the Government aircraft used.
- (2) The dates used for travel.
- (3) The name(s) of the pilot(s), other crewmembers, and qualified non-crewmembers.
- (4) The purpose(s) of the flight.
- (5) The route(s) flown.
- (6) The names of all passengers.

**§301-70.906 Must we report use of our Government aircraft to carry senior Federal officials and non-Federal travelers?**

Yes, except when the trips are classified, you must report to GSA's Office of Governmentwide Policy (MTT) all uses of your aircraft for travel by any senior Federal official or non-Federal traveler, by using an electronic reporting tool found at [www.gsa.gov/sfr](http://www.gsa.gov/sfr), unless travel is authorized under 10 U.S.C. 2648 and regulations implementing that statute.

**§301-70.907 What information must we report on the use of Government aircraft to carry senior Federal officials and non-Federal travelers and when must it be reported?**

You must report on a semi-annual basis to the General Services Administration (GSA) information about Senior Federal officials and non-Federal travelers who fly aboard your aircraft. The reporting periods are October 1 through March 31 and April 1 through September 30 of each fiscal year. A report is due to GSA not later than 30 calendar days after the close of each reporting period and must contain the following information:

(a) The person's name with indication that he/she is either a senior Federal official or a non-Federal traveler, whichever is appropriate.

(b) The traveler's organization and title or other appropriate descriptive information, e.g., dependent, press, etc.

(c) Name of the authorizing agency.

(d) The official purposes of the trip.

(e) The destination(s).

(f) For personal or political travel, the amount that the traveler must reimburse the Government (*i.e.*, the full coach fare or appropriate share of that fare).

(g) For official travel, the comparable city-pair fare (if available to the traveler) or the full coach fare if the city-pair fare is not available.

(h) The cost to the Government to carry this person (*i.e.*, the appropriate allocated share of the Federal or CAS aircraft trip costs).

**Note to §301-70.907:** You are not required to report classified trips; however, you must maintain information on classified trips for two years. Most of the information required by paragraphs (a) through (g) of this section can be found on the traveler's travel authorization. Your aircraft management office must provide the information about crewmembers and qualified non-crewmembers required by paragraph (b) as well as the information required by paragraph (h). For more information on calculating costs, see the "U.S. Government Aircraft Cost Accounting Guide," published by the Aircraft Management Policy Division (MTA), General Services Administration, 1800 F Street, N.W., Washington, DC, 20405.

**§301-70.908 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?**

Yes, an agency that operates aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

**§301-70.909 What disclosure information must we give to anyone who flies on our Government aircraft?**

You must give each person aboard your aircraft a copy of the following disclosure statement:

**DISCLOSURE FOR PERSONS FLYING ABOARD FEDERAL GOVERNMENT AIRCRAFT**

**NOTE:** The disclosure contained herein is not all-inclusive. You should contact your sponsoring agency for further assistance.

Generally, an aircraft used exclusively for the U.S. Government may be considered a 'public aircraft' as defined in 49 U.S.C. 40102 and 40125, unless it is transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal aviation regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If a U.S. Government

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agency transports passengers on a Government aircraft, that agency must comply with all Federal aviation regulations applicable to civil aircraft. If you have questions about the status of a particular flight, you should contact the agency sponsoring the flight.

You and your family have certain rights and benefits in the unlikely event you are injured or killed while riding aboard a Government aircraft. Federal employees and some private citizens are eligible for workers' compensation benefits under the Federal Employees' Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency's benefits office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs at (202) 693-0044. (These rules also apply to travel on other Government-owned or operated conveyances such as cars, vans, or buses.)

State or foreign laws may provide for product liability or "third party" causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Some insurance policies may exclude coverage for injuries or death sustained while traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) is authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to state programs, as well as the U.S. Attorneys Office, for the benefit of victims of terrorist acts or mass violence.

*If you are a Federal employee:*

1. If you are injured or killed on the job during the performance of duty — including while traveling aboard a Government aircraft or other government-owned or operated conveyance for business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its

employees. However, you may have cause of action against potentially liable third parties.

2. You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

*If you are a private citizen not employed by the Federal Government:*

1. Even if you are not regularly employed by the Federal Government, if you are rendering personal service to the Federal Government on a voluntary basis or for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workers' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you depart, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

2. If there is a determination that you are not a Federal employee, you and your family will not be eligible to receive workman's compensation benefits under FECA. If you are traveling for business purposes, you may be eligible for workman's compensation benefits under state law. If the accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

**§301-70.910 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?**

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A-126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A-126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A-126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

**PART 301-71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS**

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701 note).

**Subpart A—General**

**Note to Subpart A:** For purposes of this subpart, GSA uses a “we” question when referring to an agency, and an “I” question when referring to the employee.

**§301-71.1 What is the purpose of an agency travel accounting system?**

To:

- (a) Pay authorized and allowable travel expenses of employees;
- (b) Provide standard data necessary for the management of official travel; and
- (c) Ensure adequate accounting for all travel and transportation expenses for official travel.

**§301-71.2 What are the standard data elements and when must they be captured on a travel accounting system?**

The data elements are listed in [Appendix C](#) of this chapter and must be on any travel claim form authorized for use by your employees.

**§301-71.3 May we use electronic signatures on travel documents?**

Yes, if you meet the security and privacy requirements established by the National Institute of Standards and Technology (NIST) for electronic data interchange.

**Subpart B—Travel Authorization****§301-71.100 What is the purpose of the travel authorization process?**

The purpose is to:

- (a) Provide the employee information regarding what expenses you will pay;
- (b) Provide travel service vendors with necessary documentation for the use of travel programs;
- (c) Provide financial information necessary for budgetary planning; and
- (d) Identify purpose of travel.

**§301-71.101 What travel may we authorize?**

You may authorize only travel which is necessary to accomplish the purposes of the Government effectively and economically. This must be communicated to any official who has the authority to authorize travel.

**§301-71.102 May we issue a single authorization for a group of employees?**

Yes. You may issue a single authorization for a group of employees when they are traveling together on a single trip. However, you must attach a list of all travelers to the authorization.

**§301-71.103 What information must be included on all travel authorizations?**

You must include:

- (a) The name of the employee(s);
- (b) The signature of the proper authorizing official;
- (c) Purpose of travel;
- (d) Any conditions of or limitations on that authorization;
- (e) An estimate of the travel costs (for open authorizations it should include an estimate of the travel costs over the period covered); and
- (f) A statement that the employee(s) is (are) authorized to travel.

**§301-71.104 Who must sign a travel authorization?**

Your agency head or an official to whom such authority has been delegated. This authority may be delegated to any person(s) who is aware of how the authorized travel will support the agency’s mission, who is knowledgeable of the employee’s travel plans and/or responsible for the travel funds paying for the travel involved.

**§301-71.105 Must we issue a written or electronic travel authorization in advance of travel?**

Yes, except when advance written or electronic authorization is not possible or practical and approval is in accordance with [§§301-2.1](#) and [301-2.5](#) for:

- (a) Use of other than coach-class service accommodation on common carriers or use of other than lowest first-class accommodation on ships;
- (b) Use of a foreign air carrier;
- (c) Use of reduced fares for group or charter arrangements;
- (d) Use of cash to pay for common carrier transportation;
- (e) Use of extra-fare train service;
- (f) Travel by ship;
- (g) Use of a rental car;
- (h) Use of a Government aircraft;
- (i) Payment of a reduced rate per diem;
- (j) Payment of actual expenses;
- (k) Travel expenses related to emergency travel;
- (l) Transportation expenses related to threatened law enforcement/investigative employees and members of their immediate families;
- (m) Travel expenses related to travel to a foreign area, except as provided by agency mission;

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- (n) Acceptance of payment from a non-Federal source for travel expenses (see [Chapter 304](#) of this title); and
- (o) Travel expenses related to attendance at a conference.

**Note to §301-71.105:** You should establish procedures for travel situations where it is not practical or possible to issue a written authorization in advance, except for [paragraphs \(c\), \(i\), \(n\), and \(o\)](#), which always require written or electronic advance authorization.

**§301-71.106 Who must sign a trip-by-trip authorization?**

The appropriate official is determined as follows:

For	The appropriate official to sign a trip-by-trip authorization is
Use of cash to procure common carrier transportation.	An official at as low an administrative level as permitted by 41 CFR 101-203.2 to ensure adequate consideration and review of the circumstances.
Travel on a Government aircraft.	Determined under 41 CFR 101-37.405.
Acceptance of payment from a non-Federal source for travel expenses.	An official at as low an administrative level as permitted by 41 CFR <a href="#">Chapter 304</a> to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment.
Travel expenses related to attendance at a conference.	A senior agency official.
All other specific authorizations.	An official who may issue the employee a general authorization.

**§301-71.107 When authorizing travel, what factors must the authorizing official consider?**

The following factors must be considered:

- (a) The need for the travel;
- (b) The use of travel substitutes (e.g., mail, teleconferencing, etc.);
- (c) The most cost effective routing and means of accomplishing travel; and
- (d) The employee's travel plans, including plans to take leave in conjunction with travel.

**§301-71.108 What internal policies and procedures must we establish for travel authorization?**

You must establish the following:

- (a) The circumstances under which different types of travel authorizations will be used, consistent with the guidelines in this subpart;
- (b) Who will be authorized to sign travel authorizations; and
- (c) What format you will use for travel authorizations.

**Subpart C—Travel Claims for Reimbursement****§301-71.200 Who must review and sign travel claims?**

The travel authorizing/approving official or his/her designee (e.g., supervisor of the traveler) must review and sign travel claims to confirm the authorized travel.

**§301-71.201 What are the reviewing official's responsibilities?**

The reviewing official must have full knowledge of the employee's activities. He/she must ensure:

- (a) The claim is properly prepared in accordance with the pertinent regulations and agency procedures;
- (b) A copy of authorization for travel is provided;
- (c) The types of expenses claimed are authorized and allowable expenses;
- (d) The amounts claimed are accurate; and
- (e) The required receipts, statements, justifications, etc. are attached to the travel claim, or once the agency fully deploys ETS and implements electronic scanning, the electronic travel claim includes scanned electronic images of such documents.

**§301-71.202 May we pay a claim when an employee does not include a copy of the corresponding authorization?**

Yes, as long as the travel claim was signed by the approving/authorizing official, except for the following, which require advance authorization:

- (a) Use of reduced fares for group or charter arrangements;
- (b) Payment of a reduced rate of per diem for subsistence expenses;
- (c) Acceptance of payment from a non-Federal source for travel expenses; and
- (d) Travel expenses related to attendance at a conference.

**§301-71.203 Who is responsible for the validity of the travel claim?**

The certifying officer assumes ultimate responsibility under 31 U.S.C. 3528 for the validity of the claim; however:

- (a) The traveler must ensure all travel expenses are prudent and necessary and submit the expenses in the form of a proper claim;
- (b) The authorizing/approving official shall review the completed claim to ensure that the claim is properly prepared in accordance with regulations and agency procedures prior to authorizing it for payment.

**Note to §301-71.203:** You should consider limiting the levels of approval to the lowest level of management.

**§301-71.204 Within how many calendar days after the submission of a proper travel claim must we reimburse the employee's allowable expenses?**

You must reimburse the employee within 30 calendar days after the employee submits a proper travel claim to the agency's designated approving office. You must use a satis-

factory recordkeeping system to track submission of travel claims. For example, travel claims submitted by mail, in accordance with agency policy, could be annotated with the time and date of receipt by the agency. You could consider travel claims electronically submitted to the designated approving office as submitted on the date indicated on an e-mail log, or on the next business day if submitted after normal working hours. However, claims for the following relocation allowances are exempt from this provision:

- (a) Transportation and storage of household goods and professional books, papers and equipment;
- (b) Transportation of mobile home;
- (c) Transportation of a privately owned vehicle;
- (d) Temporary quarters subsistence expense, when not paid as lump sum;
- (e) Residence transaction expenses;
- (f) Relocation income tax allowance;
- (g) Use of a relocation services company;
- (h) Home marketing incentive payments; and
- (i) Allowance for property management services.

**§301-71.205 Under what circumstances may we disallow a claim for an expense?**

If the employee:

- (a) Does not properly itemize his/her expenses;
- (b) Does not provide required receipts or other documentation to support the claim; or
- (c) Claims an expense which is not authorized.

**§301-71.206 What must we do if we disallow a travel claim?**

You must:

- (a) Pay the employee the amount of the travel claim which is not in dispute;
- (b) Notify the employee that the claim was disallowed with a detailed explanation of why; and
- (c) Tell the employee how to appeal the disallowance if he/she desires an appeal, and your process and schedule for deciding the appeal.

**§301-71.207 What internal policies and procedures must we establish for travel reimbursement?**

You must establish policies and procedures governing:

- (a) Who are the proper officials to review, approve, and certify travel claims (including travel claims requiring special authorization);
- (b) How an employee should submit a travel claim (including whether to use a standard form or an agency form and whether the form should be written or electronic);
- (c) When you will exempt employees from the requirement for a receipt;

(d) Timeframes for employee to submit a claim (see [§301-52.7](#));

(e) Timeframe for agency to pay a claim (see [§301-71.204](#));

(f) Process for disallowing a claim; and

(g) Process for resolving a disallowed claim.

**§301-71.208 Within how many calendar days after submission of a proper travel claim must we notify the employee of any errors in the claim?**

You must notify the employee as soon as practicable after the employee's submission of the travel claim of any error that would prevent payment within 30 calendar days after submission and provide the reason(s) why the claim is not proper. However, not later than May 1, 2002, you must achieve a maximum time period of seven working days for notifying an employee that his/her travel claim is not proper.

**§301-71.209 Must we pay a late payment fee if we fail to reimburse the employee within 30 calendar days after receipt of a proper travel claim?**

Yes, a late payment fee, in addition to the amount due the employee, must be paid for any proper travel claim not reimbursed within 30 calendar days of submission to the approving official.

**§301-71.210 How do we calculate late payment fees?**

Late payment fees are calculated either by:

(a) Using the prevailing Prompt Payment Act Interest Rate beginning on the 31<sup>st</sup> day after submission of a proper travel claim and ending on the date on which payment is made; or

(b) A flat fee, of not less than the prompt payment amount, based on an agencywide average of travel claim payments; and

(c) In addition to the fee required by [paragraphs \(a\)](#) and [\(b\)](#) of this section, you must also pay an amount equivalent to any late payment charge that the card contractor would have been able to charge had the employee not paid the bill. Payment of this additional fee will be based upon the effective date that a late payment charge would be allowed under the agreement between the employee and the card contractor.

**§301-71.211 Is there a minimum amount the late payment fee must exceed before we will pay it?**

Yes, a late payment fee will only be paid when the computed late payment fee is \$1.00 or greater.

**§301-71.212 Should we report late payment fees as wages on a Form W-2?**

No, the Internal Revenue Service (IRS) has determined that the late payment fee is in the nature of interest (compensation for the use of money).

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**§301-71.213 Is the additional fee, which is the equivalent to any late payment charge that the card contractor would have been able to charge had the employee not paid the bill, considered income?**

Yes, you must report this late payment fee as additional wages on Form W-2.

**§301-71.214 Does mandatory use of the Government contractor-issued travel charge card change the employee's obligation to pay his/her travel card bill by the due date?**

No, mandatory use of the Government contractor-issued travel charge card does not relieve the employee of his/her obligation to honor his/her cardholder payment agreement.

**Subpart D—Accounting for Travel Advances**

**§301-71.300 What is the policy governing the use of travel advances?**

You should minimize the use of cash travel advances. However, you should not require an employee to pay travel expenses using personal funds unless the employee has elected not to use alternative resources provided by the Government, such as a Government contractor-issued charge card.

**§301-71.301 In situations where a lodging facility requires the payment of a deposit, may we reimburse an employee for an advance room deposit prior to the beginning of scheduled official travel?**

Yes, you may reimburse an employee an advance room deposit, when such a deposit is required by the lodging facility to secure a room reservation, prior to the beginning of an employee's scheduled official travel. However, if the employee is reimbursed the advance room deposit, but fails to perform the scheduled official travel for reasons not acceptable to the agency, resulting in the forfeiture of the deposit, the employee is indebted to the Government and must repay that amount in a timely manner as prescribed by you.

**§301-71.302 For how long may we issue a travel advance?**

You may issue a travel advance for a reasonable period not to exceed 45 days.

**§301-71.303 What data must we capture in our travel advance accounting system?**

You must capture the following data:

- (a) The name and social security number of each employee who has an advance;
- (b) The amount of the advance;
- (c) The date of issuance; and
- (d) The date of reconciliation for unused portions of travel advances.

**§301-71.304 Are we responsible for ensuring the collection of outstanding travel advances?**

Yes.

**§301-71.305 When must an employee account for a travel advance?**

An employee must account for an outstanding travel advance each time a travel claim is filed. If the employee receives a travel advance but determines that the related travel will not be performed, then the employee must inform you that the travel will not be performed and repay the advance at that time.

**§301-71.306 Are there exceptions to collecting an advance at the time the employee files a travel claim?**

Yes, when the employee is in a continuous travel status and

- (a) You review each outstanding travel advance on a periodic basis (the period will be for a reasonable time of 45 days or less); and

- (b) You determine the amount, if any, of the outstanding balance exceeds the amount of estimated travel expenses for the authorized period and collect the excess amount from the employee.

**§301-71.307 How do we collect the amount of a travel advance in excess of the amount of travel expenses substantiated by the employee?**

When the outstanding advance exceeds what you owe the employee, then the employee must submit cash or a check for the difference in accordance with your policy. Your failure to collect the amount in excess of substantiated expenses will cause a violation of the accountable plan rules contained in the Internal Revenue Code (title 26 of the United States Code).

**§301-71.308 What should we do if the employee does not pay back a travel advance when the travel claim is filed?**

You should take alternative steps to collect the debt including:

- (a) Offset against the employee's salary, a retirement credit, or other amount owed the employee;
- (b) Deduction from an amount the Government owes the employee; or
- (c) Any other legal method of recovery.

**§301-71.309 What internal policies and procedures must we establish governing travel advances?**

Accountability for cash advances for travel, recovery, and reimbursement shall be in accordance with procedures prescribed by the Government Accountability Office (see Government Accountability Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures).

**PART 301-72—AGENCY RESPONSIBILITIES RELATED TO COMMON CARRIER TRANSPORTATION**

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 3726;  
40 U.S.C. 121.

**Subpart A—Procurement of Common Carrier Transportation**

**§301-72.1 Why is common carrier presumed to be the most advantageous method of transportation?**

Travel by common carrier is presumed to be the most advantageous method of transportation because it generally results in the most efficient, least costly, most expeditious means of transportation and the most efficient use of energy resources.

**§301-72.2 May we utilize methods of transportation other than common carrier (e.g., POVs, chartered vehicles, etc.)?**

Yes, but only when use of common carrier transportation:

- (a) Would interfere with the performance of official business;
- (b) Would impose an undue hardship upon the traveler; or
- (c) When the total cost by common carrier would exceed the cost of the other method of transportation.

**§301-72.3 What method of payment must we authorize for common carrier transportation?**

You must authorize one or more of the following as appropriate:

- (a) GSA's Government contractor-issued individually billed charge card(s);
- (b) Agency centrally billed or other established accounts;
- (c) Cash payments (personal funds or travel advances in the form of travelers checks or authorized ATM cash withdrawals) when the cost of transportation is less than \$100, under [§301-51.100](#) of this chapter (cash may or may not be accepted by the carrier for the purchase of city pair fares); or
- (d) GTR(s) when no other option is available or feasible.

**Subpart B—Accounting for Common Carrier Transportation**

**§301-72.100 What must my travel accounting system do in relation to common carrier transportation?**

Your system must:

- (a) Authorize the use of cash in accordance with [§301-51.100](#) or as otherwise required;
- (b) Correlate travel data accumulated by your authorization and claims accounting systems with common carrier transportation documents and data for audit purposes;
- (c) Identify unused tickets for refund;

(d) Collect unused, partially used, or downgraded/exchanged tickets, from travelers upon completion of travel;

(e) Track denied boarding compensation from employees;

(f) Identify and collect refunds due from carriers for overpayments, or unused, partially used, or downgraded/exchanged tickets; and

(g) Reconcile all centrally billed travel expenses (e.g., airline, lodging, car rentals, etc.) with travel authorizations and claims to assure that only authorized charges are paid.

**§301-72.101 What information should we provide an employee before authorizing the use of common carrier transportation?**

You should provide the employee:

(a) Notice that he/she is accountable for all tickets, GTRs and other transportation documents;

(b) Your procedures for the control and accounting of common carrier transportation documents, including the procedures for submitting unused, partially used, downgraded/exchanged tickets, refund receipts or ticket refund applications, and denied boarding compensation; and

(c) A credit/refund address so the carrier can credit/refund the agency for unused tickets (when the tickets have been issued using an agency centrally billed account or by GTR).

**Subpart C—Cash Payments for Procuring Common Carrier Transportation Services**

**§301-72.200 Under what conditions may we authorize cash payments for procuring common carrier transportation services?**

In accordance with [§301-51.100](#).

**§301-72.201 What must we do if an employee uses cash in excess of the \$100 limit to purchase common carrier transportation?**

To justify the use of cash in excess of \$100, both the agency and traveler must certify on the travel claim the necessity for such use. See 41 CFR 101-41.203-2.

**§301-72.202 Who may approve cash payments in excess of the \$100 limit?**

You must ensure the delegation of authority for the authorization or approval of cash payments over the \$100 limit is in accordance with 41 CFR 101-41.203-2.

**§301-72.203 When may we limit traveler reimbursement for a cash payment?**

If you determine that the cash payment was made under a non-emergency circumstance, reimbursement to the traveler

must not exceed the cost which would have been properly chargeable to the Government had the traveler used a government provided payment resource, (e.g., individual Government contractor-issued travel charge card, centrally billed account, or GTR). However, an agency can determine to make full payment when circumstances warrant (e.g., invitational travel, infrequent travelers and interviewees).

**§301-72.204 What must we do to minimize the need for a traveler to use cash to procure common carrier transportation services?**

You must establish procedures to encourage travelers to use the GSA individual Government contractor-issued travel charge card(s), or your agency's centrally billed or other established account, or a GTR (when no other option is available or feasible).

**Subpart D—Unused, Partially Used, Exchanged, Canceled, or Oversold Common Carrier Transportation Services**

**§301-72.300 What procedures must we establish to collect unused, partially used, and exchanged tickets?**

You must establish administrative procedures providing:

- (a) Written instructions explaining traveler liability for the value of tickets issued until all ticket coupons are used or properly accounted for on the travel voucher;
- (b) Instructions for submitting payments received from carriers for failure to provide confirmed reserved space;
- (c) The traveler with a "bill charges to" address, so that the traveler can provide this information to the carrier for returned or exchanged tickets.
- (d) Procedures for promptly identifying any unused tickets, coupons, or other evidence of refund due the Government.

**§301-72.301 How do we process unused, partially used, and exchanged tickets?**

(a) *For unused or partially used tickets purchased with GTRs:* You must obtain the unused or partially used ticket from the traveler, issue Standard Form 1170 (SF 1170) "Redemption of Unused Ticket" to the airline and or travel agency that issued the ticket, maintain a suspense file to monitor the airline/travel agency refund, and record and deposit the airline/travel agency refund upon receipt. See 41 CFR 102-118.145 and the U.S. Government Passenger Transportation Handbook (<http://fss.gsa.gov/transtrav/usgpth.pdf>) for policies and procedures regarding the use of SF 1170.

(b) *For unused or partially used tickets purchased under centrally billed accounts:* You must obtain the unused ticket from the traveler, return it to the issuing office that furnished the airline ticket, obtain a receipt indicating a credit is due, and confirm that the value of the unused ticket has been credited to the centrally billed account.

(c) *For exchanged tickets purchased with GTRs:* You must obtain the airline/travel agency refund application or receipt from the traveler, and maintain a suspense file to monitor the airline/travel agency refund. For additional guidance see 41 CFR 102-118.145 and the U.S. Government Passenger Transportation Handbook (<http://fss.gsa.gov/transtrav/usgpth.pdf>).

(d) *For exchanged tickets purchased under centrally billed accounts:* You must obtain the airline receipt from the traveler showing a credit is due the agency, and ensure that the unused portion of the exchanged ticket coupon is credited to the centrally billed account.

## PART 301-73—TRAVEL PROGRAMS

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c).

### Subpart A—General Rules

#### **§301-73.1 What does the Federal travel management program include?**

The Federal travel management program includes—

- (a) A travel authorization and claim system that implements the related requirements of the Federal Travel Regulation. (See [§§301-2.1](#) and [301-52.3](#) and [Part 301-71](#) of this chapter for those requirements);
- (b) A TMS that provides reservation and ticketing support and management reports on reservation and ticketing activities. (See [§301-73.106](#) for specific services that should be provided by a TMS);
- (c) A Travel payment system for paying travel service providers in accordance to [§§301-73.300](#) and [301-73.301](#) of this chapter;
- (d) Contracts and similar arrangements, with transportation and lodging providers (e.g. Government-contract air carriers, rental car companies, trains, hotels (e.g., FedRooms properties), etc.) that give preferential rates and other benefits to Federal travelers on official business; and
- (e) A Travel Management Reporting System that covers financial and other travel characteristics required by the biennial Travel Survey (see [§§300-70.1](#) through [300-70.4](#) of this title).

**Note to §301-73.1:** The E-Gov Travel Service (ETS) fulfills the requirements of [paragraphs \(a\), \(b\), and \(e\)](#) of this section.

#### **§301-73.2 What are our responsibilities as participants in the Federal travel management program?**

As a participant in the Federal travel management program, you must—

- (a) Designate an authorized representative to administer the program including leading your agency's migration of ETS;
- (b) Ensure that you have internal policies and procedures in place to govern use of the program including a plan and timeline to implement ETS no later than December 31, 2004, with agency-wide migration to ETS completed no later than September 30, 2006;
- (c) Establish a plan that will measure direct and indirect cost savings and management efficiencies through the use of ETS once deployed. This plan must include your migration plan and schedule which must be submitted by March 31, 2004 to the E-Gov Travel Program Management Office (PMO) (see [§301-73.101](#));
- (d) Require employees to use ETS in lieu of your TMS as soon as it becomes available in your agency (unless an excep-

tion has been granted in accordance with [§§301-73.102](#) or [301-73.104](#)), but no later than September 30, 2006; and

- (e) Ensure that any agency-contracted travel agency services (TMS) complement and support ETS in an efficient and cost effective manner.

### Subpart B—eTravel Service and Travel Management Service

#### **§301-73.100 Must we require employees to use the E-Gov Travel Service?**

Yes, unless you have an exception to the use of the ETS (see [§§301-73.102](#) and [301-73.104](#)), you must have fully deployed the ETS across your agency and require employees to use the ETS for all temporary duty travel no later than September 30, 2006. Agencies must submit their ETS migration plans and schedules by March 31, 2004 to the eTravel PMO, (see [§301-73.101](#)). You must implement the ETS no later than December 31, 2004, and require employees to use the ETS as soon as it becomes available in your agency. The Department of Defense and the Government of the District of Columbia are not subject to this requirement.

**Notes to §301-73.100:** (1) You have the option to use the contracted travel agent service(s) of your choice (through the ETS or other contract vehicles). You have the responsibility for ensuring agency-contracted travel agent services complement and support the ETS in an efficient and cost effective manner. (2) Award of a task order to a vendor on the ETS Master Contract constitutes ETS implementation. Agency-wide use of the ETS for all travel management processes and travel claim submission constitutes complete migration.

#### **§301-73.101 How must we prepare to implement ETS?**

You must prepare to implement ETS as expeditiously as possible by—

- (a) Developing a migration plan and schedule to deploy ETS across your agency as early as possible with full deployment required no later than September 30, 2006;
- (b) Requiring employees to use your ETS unless you approve an exception under [§301-50.6](#), [§301-73.102](#) or [§301-73.104](#);
- (c) Establishing goals, plans and procedures to maximize agency-wide traveler use of your online self-service booking tool once you have fully deployed ETS within your agency. These goals, plans, and procedures should be available for submission to the ETS PMO upon its request.

**Note 1 to §301-73.101:** Your agency should work with the Office of Management and Budget (OMB) to allocate budget and personnel resources to support ETS migration and data exchange. Your agency is responsible for providing the funds required to establish interfaces

## §301-73.102

between the ETS standard data output and applicable business systems (*e.g.*, financial, human resources, etc.)

**Note 2 to §301-73.101:** Best practices show that organizations are able to realize significant benefits once they achieve a 70 percent or greater self-booking rate.

## §301-73.102 May we grant a traveler an exception from required use of TMS or ETS once we have fully deployed ETS within the agency?

(a) Yes, your agency head or his/her designee may grant an individual case by case exception to required use of your agency's current TMS or to required use of ETS once it is fully deployed within the agency, but only when travel meets one of the following conditions:

(1) Such use would result in an unreasonable burden on mission accomplishment (*e.g.*, emergency travel is involved and TMS/ETS is not accessible; the traveler is performing invitational travel; or the traveler has special needs or requires disability accommodations in accordance with part [301-13](#) of this chapter).

(2) Such use would compromise a national security interest.

(3) Such use might endanger the traveler's life (*e.g.*, the individual is traveling under the Federal witness protection program, or is a threatened law enforcement/investigative officer traveling under part [301-31](#) of this chapter).

(b) Any exception granted must be consistent with any contractual terms applicable to your current TMS or ETS, once it is fully deployed, and must not cause a breach of contract terms.

## §301-73.103 What must we do when we approve an exception to use of the E-Gov Travel Service?

The head of your agency or his/her designee must approve an exception to the use of the ETS under [§301-73.102](#) in writing or through electronic means.

## §301-73.104 May further exceptions to the required use of the E-Gov Travel Service be approved?

(a) The Administrator of General Services or his/her designee may grant an agency-wide exception (or exempt a component thereof) from the required use of ETS when requested by the head of a Department (cabinet-level agency) or head of an Independent agency when—

(1) The agency has presented a business case analysis to the General Services Administration that proves that it has an alternative TMS to the ETS that is in the best interest of the Government and the taxpayer (*i.e.*, the agency has evaluated the economic and service values offered by the ETS contractor(s) compared to those offered by the agency's current Travel Management Service (TMS) and has determined that the agency's current TMS is a better value);

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(2) The agency has security, secrecy, or protection of information issues that cannot be mitigated through security provided by the ETS contractors;

(3) The agency lacks the technology necessary to access ETS; or

(4) The agency has critical and unique technology or business requirements that cannot be accommodated by the ETS contractors at all or at an acceptable and reasonable price (*e.g.*, majority of travel is group-travel).

(b) As a condition of receiving an exception, the agency must agree to conduct annual business case reviews of its TMS and must provide to the eTravel PMO data elements required by the eTravel PMO in a format prescribed by the eTravel PMO.

(c) Requests for exceptions should be sent to the Administrator, General Services Administration, 1800 F Street, NW., Washington, DC 20405 with full justification and/or analysis addressing [paragraphs \(a\)\(1\), \(a\)\(2\), \(a\)\(3\), or \(a\)\(4\)](#) of this section.

## §301-73.105 What are the consequences of an employee not using the E-Gov Travel Service or the TMS?

If an employee does not use the ETS (when available) or your agency's designated TMS, he/she is responsible for any additional costs (see [§301-50.5](#) of this chapter) resulting from the failure to use the ETS or your TMS. In addition, you may take appropriate disciplinary actions.

## §301-73.106 What are the basic services that should be covered by a TMS?

The TMS must, at a minimum—

(a) Include a Travel Management Center (TMC), commercial ticket office (CTO), an in-house system, an electronically available system, or other method(s) of arranging travel, which has the ability to provide the following as appropriate to the agency's travel needs:

(1) Booking and fulfillment of common carrier arrangements (*e.g.*, flight confirmation and seat assignment, compliance with the Fly America Act, Governmentwide travel policies, contract city-pair fares, electronic ticketing, ticket delivery, etc.).

(2) Lodging information (*e.g.*, room availability, reservations and confirmation, compliance with Hotel/Motel Fire Safety Act, availability of FedRooms properties, per diem rate availability, etc.).

(3) Car rental and rail information (*e.g.*, availability of Defense Travel Management Office (DTMO) Government agreement rates where applicable, confirmation of reservations, etc.).

(b) Provide basic management information, such as—

(1) Number of reservations by type of service (common carrier, lodging, and car rental);

- (2) Extent to which reservations are in compliance with policy and reasons for exceptions;
- (3) Origin and destination points of common carrier usage;
- (4) Destination points for lodging accommodations;
- (5) Number of lodging nights in approved accommodations;
- (6) City or location where car rentals are obtained; and
- (7) Other tasks, e.g., reconciliation of charges on centrally billed accounts and processing ticket refunds.

**Note to §301-73.106:** The ETS fulfills the basic services of a TMS. You have the option to use the contracted travel agent service(s) of your choice through ETS or other contract vehicles. You have the responsibility to ensure that agency-contracted-for travel agent services complement and support the ETS in an efficient and cost effective manner. (See [§301-73.2](#).)

## **Subpart C—Contract Passenger Transportation Services**

### **§301-73.200 Must we require our employees to use GSA's contract passenger transportation services program?**

Yes, if such services are available to your agency.

### **§301-73.201 What method of payment may be used for contract passenger transportation service?**

GSA individual Government contractor-issued travel charge card(s), or your agency centrally billed or other established account, or a GTR (when no other option is available or feasible).

### **§301-73.202 Can contract fares be used for personal travel?**

No.

## **Subpart D—Travel Payment System**

### **§301-73.300 What is a travel payment system?**

A system to facilitate the payment of official travel and transportation expenses which includes, but is not limited to:

- (a) Issuance and maintenance of Government contractor-issued individually billed charge cards;
- (b) Establishment of centrally billed accounts for the purchase of travel and transportation services;
- (c) Issuance of travelers checks; and
- (d) Provision of automated-teller-machine (ATM) services worldwide.

### **§301-73.301 How do we obtain travel payment system services?**

You may participate in GSA's or another Federal agency's travel payment system services program or you may contract directly with a travel payment system service if your agency has contracting authority and you are not a mandatory user of GSA's charge card program.

**Note to §301-73.301:** Under the new GSA charge card program effective November 30, 1998, it will be your responsibility to select the vendor that will be most beneficial to your agency's travel and transportation needs.

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## PART 301-74—CONFERENCE PLANNING

**Authority:** 5 U.S.C. 5707.

### Subpart A—Agency Responsibilities

**Note to Subpart A:** Use of pronouns “we”, “you”, and their variants throughout this part refers to the agency.

#### §301-74.1 What policies must we follow in planning a conference?

When planning a conference, you must:

- (a) Minimize all conference costs, including administrative costs, conference attendees’ travel costs, and conference attendees’ time costs;
- (b) Maximize the use of Government-owned or Government provided conference facilities as much as possible;
- (c) Identify opportunities to reduce costs in selecting a particular conference location and facility (e.g., through the availability of lower rates during the off-season at a site with seasonal rates); and
- (d) Ensure that the conference planner or designee does not retain for personal use any promotional benefits or materials received from a travel service provider as a result of booking the conference (see [§§301-53.2](#) and [301-53.3](#) of this chapter); and
- (e) Develop and establish internal policies to ensure these standards are met.

#### §301-74.2 What costs should be considered when planning a conference?

When planning a conference, you should consider all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to travelers or others associated with the conference. Some examples of such costs are:

- (a) Authorized travel and per diem expenses;
- (b) Hire of rooms for official business;
- (c) Audiovisual and other equipment usage;
- (d) Computer and telephone access fees;
- (e) Light refreshments;
- (f) Printing;
- (g) Registration fees;
- (h) Ground transportation; and
- (i) Employees’ time at the conference and on en route travel.

#### §301-74.3 What must we do to determine which conference expenditures result in the greatest advantage to the Government?

To determine conference expenditures, you must:

- (a) Assure there is appropriate management oversight of the conference planning process;

(b) Always do cost comparisons of the size, scope, and location of the proposed conference;

(c) Determine if a Government facility is available at a cheaper rate than a commercial facility;

(d) Consider alternatives to a conference, e.g., teleconferencing; and

(e) Maintain written documentation of the alternatives considered and the selection rationale used.

#### §301-74.4 What should cost comparisons include?

Cost comparisons should include, but not be limited to, a determination of adequacy of lodging rooms at the established per diem rates, overall convenience of the conference location, fees, availability of meeting space, equipment, and supplies, and commuting or travel distance of attendees. (See [Appendix E](#) to this chapter, Suggested Guidance for Conference Planning.)

#### §301-74.5 How should we select a location and a facility?

Site selection is a final decision as to where to hold your conference. The term “site” refers to both the geographical location and the specific facility(ies) selected. In determining the best site in the interest of the Government, you should exercise strict fiscal responsibility to minimize costs. The actions in [§301-74.3](#) must be followed. Cost comparisons must cover factors such as those listed in [§301-74.4](#). As part of the cost comparison, you must use the established per diem rate for the locations for which you are comparing costs.

#### §301-74.6 What can we do if we cannot find an appropriate conference facility at the chosen locality per diem rate?

While it is always desirable to obtain lodging facilities within the established lodging portion of the per diem rate for the chosen locality, it may not always be possible. In negotiating lodging rates with the properties in the chosen location, you may exceed the established lodging portion of the per diem rate by up to 25 percent under [§§301-74.8](#) and [301-74.9](#), if necessary. This will provide flexibility in selecting an appropriate property at the most advantageous location. It will also permit agencies to reimburse their employees’ subsistence expenses by using the conference lodging allowance method as prescribed in [§301-74.8](#) for a Government sponsored conference and in [§301-74.9](#) for non-Government sponsored conferences, rather than the actual expense method prescribed in [Subpart D of Part 301-11](#) of this chapter.

#### §301-74.7 What is the conference lodging allowance?

The conference lodging allowance is a pre-determined maximum allowance of up to 25 percent greater than the applicable locality lodging portion of the per diem rate. Under

this reimbursement method, employees will be reimbursed the actual amount incurred for lodging up to the conference lodging allowance.

#### **§301-74.8 Who may authorize reimbursement of the conference lodging allowance for a Government sponsored conference?**

The approval authority for the conference lodging allowance is the Government agency sponsoring the conference. The sponsoring agency will determine the appropriate conference lodging allowance, up to 25 percent above the established lodging allowance for the chosen location, and that rate shall be allowable for all employees of any agency authorized to attend the conference. The determination must be made by a senior agency official at the sponsoring agency.

#### **§301-74.9 Who may authorize reimbursement of the conference lodging allowance for a non-Government sponsored conference?**

The travel approving official of a Government employee authorized to attend a non-Government sponsored conference may authorize the employee to be reimbursed for lodging expenses incurred up to the conference lodging allowance rate.

#### **§301-74.10 May the conference lodging allowance ever exceed 25 percent above the lodging per diem rate?**

No, the conference lodging allowance may not exceed 25 percent above the applicable locality lodging per diem rate.

#### **§301-74.11 May we provide light refreshments at an official conference?**

Yes. Agencies sponsoring a conference may provide light refreshments to agency employees attending an official conference. Light refreshments for morning, afternoon or evening breaks are defined to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins.

#### **§301-74.12 May we use both the conference lodging allowance method and the actual expense method of reimbursement concurrently?**

No. You must only use one reimbursement method per day in accordance with [§301-11.4](#) of this chapter.

#### **§301-74.13 May we include conference administrative costs in an employee's per diem allowance payment for attendance at a conference?**

No. Per diem is intended only to reimburse the attendee's subsistence expenses. You must pay conference registration fees separately, either directly or by reimbursing employees who pay such expenses and submit travel claims.

#### **§301-74.14 Are there any special requirements for sponsoring or funding a conference at a hotel, motel or other place of public accommodation?**

Yes. When you sponsor or fund (see 15 U.S.C. 2225a), in whole or in part, a conference at a place of public accommodation in the United States, you must use an approved accommodation (see [§300-3.1](#) of this title), except as provided in [§301-74.15](#). This provision also applies to the government of the District of Columbia when it expends Federal funds for a conference and any non-Federal entity which uses Government funds to sponsor or fund a conference.

#### **§301-74.15 May we waive the requirement in [§301-74.14](#)?**

Yes, if the head of your agency makes a written determination on an individual case basis that waiver of the requirement to use approved accommodations is necessary in the public interest for a particular event. Your agency head may delegate this waiver authority to a senior agency official or employee who is given waiver authority with respect to all conferences sponsored or funded, in whole or in part, by your agency.

#### **§301-74.16 What must be included in any advertisement or application form relating to conference attendance?**

(a) Any advertisement or application for attendance at a conference described in [§301-74.14](#) must include:

(1) Notice of the prohibition against using a non-FEMA approved place of public accommodation for conferences; and

(2) Notice that the conference lodging allowance applies to Federal attendees, if applicable.

(b) In addition, any executive agency, as defined in 5 U.S.C. 105, shall notify all non-Federal entities to which it provides Federal funds of this prohibition.

#### **§301-74.17 What special rules apply when a conference is held in the District of Columbia?**

In addition to the general rules provided in this part, the following special rules apply:

(a) You may not directly procure lodging facilities in the District of Columbia without specific authorization and appropriation from Congress (see 40 U.S.C. 34); and

(b) It is no longer mandatory that you contact GSA for meeting or conference facilities in the District of Columbia. However, you are encouraged to contact the GSA Public Buildings Service (PBS) of the National Capital Region to inquire about the availability of short-term conference and meeting facilities in the District of Columbia. For additional information see the Customer Desk Guide for Real Property Management, Chapter 1. The Customer Desk Guide can be found on the worldwide web at [http://www.gsa.gov/attachments/GSA\\_PUBLICATIONS/pub/CustomerGuidebookmarkedversion.pdf](http://www.gsa.gov/attachments/GSA_PUBLICATIONS/pub/CustomerGuidebookmarkedversion.pdf).

**Note to §301-74.17(a):** This provision does not prohibit payment of per diem to an employee authorized to obtain lodging in the District of Columbia while performing official business travel.

**§301-74.18 What policies and procedures must we establish to govern the selection of conference attendees?**

You must establish policies that reduce the overall cost of conference attendance. The policies and procedures must:

- (a) Limit your agency's representation to the minimum number of attendees determined by a senior official necessary to accomplish your agency's mission; and
- (b) Provide for the consideration of travel expenses when selecting attendees.

**§301-74.19 What records must we maintain to document the selection of a conference site?**

For each conference you sponsor or fund, in whole or in part for 30 or more attendees, you must maintain a record of the cost of each alternative conference site considered. You must consider at least three sites. You must make these records available for inspection by your Office of the Inspector General or other interested parties.

**Subpart B—Conference Attendees**

**Note to Subpart B:** Use of pronouns “we”, “you”, and their variants throughout this part refers to the agency.

**§301-74.21 What is the applicable M&IE rate when meals or light refreshments are furnished by the Government or are included in the registration fee?**

When meals or light refreshments are furnished by the Government or are included in the registration fee the applicable M&IE will be calculated as follows:

- (a) If meals are furnished the appropriate deduction from the M&IE rate must be made (see §301-11.18 of this chapter).
- (b) If light refreshments are furnished, no deduction of the M&IE allowance is required.

**§301-74.22 When may an employee, attending a conference, be authorized the conference lodging allowance?**

An employee, authorized to attend a conference, may be authorized the conference lodging allowance as prescribed in §§301-74.8 and 301-74.9.

**§301-74.23 Is the conference lodging allowance an actual expense reimbursement?**

No. The conference lodging allowance is a separate method of reimbursement for lodgings expenses.

**§301-74.24 When should actual expense reimbursement be authorized for conference attendees?**

If the conference lodging allowance still is inadequate, you may authorize actual expense reimbursement under §301-11.300 of this chapter in lieu of the conference lodging allowance method.

**§301-74.25 May we reimburse travelers for an advanced payment of a conference or training registration fee?**

Yes, you may reimburse travelers for an advanced discounted payment for a conference or training registration fee as soon as you have approved their travel to that event, and they submit a proper claim for the expenses incurred.

**§301-74.26 What is the traveler required to do if he/she is unable to attend an event for which they were reimbursed for an advanced discounted payment of a conference or training registration fee?**

In all cases where a traveler is unable to attend an event for which a discounted registration fee was paid and reimbursed in advance of the event, the traveler must seek a refund of the registration fee and repay the agency with any refund received. If no refund is made, the agency must absorb the advanced payment if the traveler's failure to attend the event was caused either by an agency decision or for reasons beyond the employee's control that are acceptable to the agency, e.g., unforeseen illness or emergency. If no refund is made, and the traveler's failure to attend the scheduled event is due to reasons deemed unexcusable by the agency, the traveler must repay the agency for the amount advanced.

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**PART 301-75—PRE-EMPLOYMENT INTERVIEW TRAVEL**

**Authority:** 5 U.S.C. 5707.

**Subpart A—General Rules****§301-75.1 What is the purpose of the allowance for pre-employment interview travel expenses?**

To help you recruit highly qualified individuals.

**§301-75.2 May we pay pre-employment interview travel expenses?**

Yes, if you determine it is in the best interest of the Government to do so. However, pre-employment travel expenses may not be authorized to offset or defray other expenses not allowable under this subpart.

**§301-75.3 What governing policies and procedures must we establish related to pre-employment interview travel?**

You must establish policies and procedures governing:

- (a) When you will pay pre-employment interview travel expenses, including the criteria for determining which individuals or positions qualify for payment of such expenses;
- (b) Who will determine, in each individual case, that a person qualifies for pre-employment interview travel expenses; and
- (c) Who will determine what expenses you will pay for each individual interviewee.

**§301-75.4 What other responsibilities do we have for pre-employment interview travel?**

You must:

- (a) Provide your interviewees with a list of FEMA approved accommodations in the vicinity of the interview, and encourage them to stay in an approved accommodation;
- (b) Inform the interviewee that he/she is responsible for excess cost and any additional expenses that he/she incurs for personal preference or convenience;
- (c) Inform the interviewee that the Government will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business;
- (d) Assist the interviewee in preparing the travel claim;
- (e) Provide the interviewee with instructions on how to submit the claim; and
- (f) Inform the interviewee that he/she may subject himself/herself to criminal penalties if he or she knowingly presents a false, fictitious, or fraudulent travel claim (See 18 U.S.C. 287 and 1001).

**Subpart B—Travel Expenses****§301-75.100 Must we pay all of the interviewee's pre-employment interview travel expenses?**

If you decide to pay the interviewee per diem or common carrier transportation costs, you must pay the full amount of such cost to which the interviewee would be entitled if the interviewee were a Government employee traveling on official business.

**§301-75.101 What pre-employment interview travel expenses may we pay?**

You may pay the following expenses:

- (a) Transportation expenses as provided in [Part 301-10](#) of this chapter;
- (b) Per diem expenses as provided in [Part 301-11](#) of this chapter;
- (c) Miscellaneous expenses as provided in [Part 301-12](#) of this chapter; and
- (d) Travel expenses of an individual with a disability or special need as provided in [Part 301-13](#) of this chapter.

**§301-75.102 What pre-employment interview travel expenses are not payable?**

You may not pay expenses for:

- (a) Use of communication services for purposes other than communication directly related to travel arrangement for the Government interview.

(b) Hire of a room at a hotel or other place to transact official business.

**§301-75.103 What are our responsibilities when we authorize an interviewee to use common carrier transportation to perform pre-employment interview travel?**

You must provide the interviewee with one of the following:

- (a) A common carrier ticket;
- (b) A GTR; or
- (c) A point of contact with your travel management center to arrange the common carrier transportation. In this instance, you must notify the travel management center that the interviewee is authorized to receive a ticket for the trip;
- (d) Written instructions explaining your procedures and the liability of the interviewee for controlling and accounting for passenger transportation documents, if common carrier transportation is required;
- (e) A credit/refund address for any common carrier transportation provided for unused government furnished tickets.

**§301-75.200****FEDERAL TRAVEL REGULATION****Subpart C—Obtaining Travel Services and  
Claiming Reimbursement****§301-75.200 How will we pay for pre-employment  
interviewee travel expenses?**

For	You will
Common carrier transportation expenses other than transit systems at the agency's location.	Bill the expenses to a centrally billed or other agency established account or provide the traveler with a GTR when no other option is available or feasible.
Other expenses.	Require payment by the interviewee and reimburse the interviewee for allowable travel expenses upon submission and approval of his/her travel claim.

**§301-75.201 May we allow the interviewee to use  
individual Government contractor-issued charge cards  
for pre-employment interview travel?**

No.

**§301-75.202 What must we do if the interviewee  
exchanges the ticket he or she has been issued?**

If	You will inform the traveler
The new ticket is more expensive than the ticket you provided.	That he/she must pay the difference using personal funds and he/she will not receive reimbursement for the extra amount.
The new ticket is less expensive than the ticket you provided.	Provide the interviewee with a credit/refund address by attaching a copy of the GTR, or some other document containing this information, to either the ticket or the travel authorization as provided in the U.S. Government Passenger Transportation Handbook" ( <a href="http://fss.gsa.gov/transtrav/usgpth.pdf">http://fss.gsa.gov/transtrav/usgpth.pdf</a> ).

**§301-75.203 May we provide the interviewee with a travel  
advance?**

No.

**§301-75.204 May we use Government contractor-issued  
travelers checks to pay for the interviewee's travel  
expenses?**

No.

**§301-75.205 Is the interviewee required to submit a travel  
claim to us?**

No. Only if the interviewee wants to be reimbursed, then he or she must submit a travel claim in accordance with your agency procedures in order to receive reimbursement for pre-employment interview travel expense.

Chapter 301—Temporary Duty (TDY) Travel Allowances

Part 301-76—Collection of Undisputed Delinquent Amounts Owed to the Contractor Issuing the Individually Billed Travel Charge Card

**§301-76.103**

## PART 301-76—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701 note).

### Subpart A—General Rules

**Note to Subpart A:** Use of pronouns “we”, “you”, and their variants throughout this part refers to the agency.

#### §301-76.1 May we collect undisputed delinquent amounts that an employee (including members of the uniformed services) owes to a Government travel charge card contractor?

Yes, upon written request from the contractor and in accordance with the procedures specified in [§301-76.100](#), you may collect undisputed amounts owed to a Government travel charge card contractor from the delinquent employee’s disposable pay. You must promptly forward all amounts deducted to the contractor.

#### §301-76.2 What is disposable pay?

Disposable pay is the part of the employee’s compensation remaining after the deduction of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as savings bonds, charitable contributions, etc. Deductions may be made from any type of pay, e.g., basic pay, special pay, retirement pay, or incentive pay.

### Subpart B—Policies and Procedures

**Note to Subpart B:** Use of pronouns “we”, “you”, and their variants throughout this part refers to the agency.

#### §301-76.100 Are there any due process requirements with which we must comply before collecting undisputed delinquent amounts on behalf of the charge card contractor?

Yes, you must:

(a) Provide the employee with written notice of the type and amount of the claim, the intention to collect the claim by deduction from his/her disposable pay, and an explanation of his/her rights as a debtor;

(b) Give the employee the opportunity to inspect and copy your records related to the claim;

(c) Allow an opportunity for a review within the agency of your decision to collect the amount; and

(d) Provide the employee an opportunity to make a written agreement with the contractor to repay the delinquent amount.

#### §301-76.101 Who is responsible for ensuring that all due process and legal requirements have been met?

You are responsible for ensuring that all requirements have been met.

#### §301-76.102 Can we collect undisputed delinquent amounts if we have not reimbursed the employee for amounts reimbursable under applicable travel regulations?

No, you may only collect undisputed delinquent amounts after you have reimbursed the employee under the applicable travel regulations and in accordance with a proper travel claim. However, if the employee has not submitted a proper travel claim within the timeframe requirements of [§301-52.7](#) of this chapter, and there are no extenuating circumstances, you may collect the undisputed delinquent amounts.

#### §301-76.103 What is the maximum amount we may deduct from the employee’s disposable pay?

As set forth in Public Law 105-264, 112 Stat. 2350, October 19, 1998, the maximum amount you may deduct from the employee’s disposable pay is 15 percent per pay period, unless the employee consents in writing to deduction of a greater percentage.

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**Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS**

For the Continental United States (CONUS) per diem rates, see applicable FTR Per Diem Bulletins, issued periodically and available on the Internet at <http://www.gsa.gov/perdiem>.

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## Appendix B to Chapter 301—Allocation of M&IE Rates To Be Used in Making Deductions From the M&IE Allowance

Deductions to M&IE rates for localities in both nonforeign areas and foreign areas shall be allocated as shown in this table. For information as to where to access per diem rates for various types of Government travel, please consult the table in §301-11.6.

M&IE Rate (\$)*	Breakfast	Lunch	Dinner	Incidentals
1 .....	\$0	\$0	\$0	\$1
2 .....	0	0	1	1
3 .....	0	1	1	1
4 .....	1	1	1	1
5 .....	1	1	2	1
6 .....	1	2	2	1
7 .....	1	2	3	1
8 .....	1	2	3	2
9 .....	1	2	4	2
10 .....	2	2	4	2
11 .....	2	3	4	2
12 .....	2	3	5	2
13 .....	2	3	5	3
14 .....	2	4	5	3
15 .....	2	4	6	3
16 .....	2	4	7	3
17 .....	3	4	7	3
18 .....	3	5	7	3
19 .....	3	5	8	3
20 .....	3	5	8	4
21 .....	3	5	9	4
22 .....	3	6	9	4
23 .....	3	6	9	5
24 .....	4	6	9	5
25 .....	4	6	10	5
26 .....	4	7	10	5
27 .....	4	7	11	5
28 .....	4	7	11	6
29 .....	4	7	12	6
30 .....	5	7	12	6
31 .....	5	8	12	6
32 .....	5	8	13	6
33 .....	5	8	13	7
34 .....	5	9	13	7
35 .....	5	9	14	7
36 .....	5	9	15	7
37 .....	6	9	15	7
38 .....	6	10	15	7
39 .....	6	10	16	7
40 .....	6	10	16	8
41 .....	6	10	17	8
42 .....	6	11	17	8

M&IE Rate (\$)*	Breakfast	Lunch	Dinner	Incidentals
43 .....	6	11	17	9
44 .....	7	11	17	9
45 .....	7	11	18	9
46 .....	7	12	18	9
47 .....	7	12	19	9
48 .....	7	12	19	10
49 .....	7	12	20	10
50 .....	8	12	20	10
51 .....	8	13	20	10
52 .....	8	13	21	10
53 .....	8	13	21	11
54 .....	8	14	21	11
55 .....	8	14	22	11
56 .....	8	14	23	11
57 .....	9	14	23	11
58 .....	9	15	23	11
59 .....	9	15	24	11
60 .....	9	15	24	12
61 .....	9	15	25	12
62 .....	9	16	25	12
63 .....	9	16	25	13
64 .....	10	16	25	13
65 .....	10	16	26	13
66 .....	10	17	26	13
67 .....	10	17	27	13
68 .....	10	17	27	14
69 .....	10	17	28	14
70 .....	11	17	28	14
71 .....	11	18	28	14
72 .....	11	18	29	14
73 .....	11	18	29	15
74 .....	11	19	29	15
75 .....	11	19	30	15
76 .....	11	19	31	15
77 .....	12	19	31	15
78 .....	12	20	31	15
79 .....	12	20	32	15
80 .....	12	20	32	16
81 .....	12	20	33	16
82 .....	12	21	33	16
83 .....	12	21	33	17
84 .....	13	21	33	17

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M&IE Rate (\$)*	Breakfast	Lunch	Dinner	Incidentals
85 .....	13	21	34	17
86 .....	13	22	34	17
87 .....	13	22	35	17
88 .....	13	22	35	18
89 .....	13	22	36	18
90 .....	14	22	36	18
91 .....	14	23	36	18
92 .....	14	23	37	18
93 .....	14	23	37	19
94 .....	14	24	37	19
95 .....	14	24	38	19
96 .....	14	24	39	19
97 .....	15	24	39	19
98 .....	15	25	39	19
99 .....	15	25	40	19
100 .....	15	25	40	20
101 .....	15	25	41	20
102 .....	15	26	41	20
103 .....	15	26	41	21
104 .....	16	26	41	21
105 .....	16	26	42	21
106 .....	16	27	42	21
107 .....	16	27	43	21
108 .....	16	27	43	22
109 .....	16	27	44	22
110 .....	17	27	44	22
111 .....	17	28	44	22
112 .....	17	28	45	22
113 .....	17	28	45	23
114 .....	17	29	45	23
115 .....	17	29	46	23
116 .....	17	29	47	23
117 .....	18	29	47	23
118 .....	18	30	47	23
119 .....	18	30	48	23
120 .....	18	30	48	24
121 .....	18	30	49	24
122 .....	18	31	49	24
123 .....	18	31	49	25
124 .....	19	31	49	25
125 .....	19	31	50	25
126 .....	19	32	50	25
127 .....	19	32	51	25
128 .....	19	32	51	26
129 .....	19	32	52	26
130 .....	20	32	52	26
131 .....	20	33	52	26
132 .....	20	33	53	26
133 .....	20	33	53	27
134 .....	20	34	53	27
135 .....	20	34	54	27
136 .....	20	34	55	27
137 .....	21	34	55	27
138 .....	21	35	55	27

M&IE Rate (\$)*	Breakfast	Lunch	Dinner	Incidentals
139 .....	21	35	56	27
140 .....	21	35	56	28
141 .....	21	35	57	28
142 .....	21	36	57	28
143 .....	21	36	57	29
144 .....	22	36	57	29
145 .....	22	36	58	29
146 .....	22	37	58	29
147 .....	22	37	59	29
148 .....	22	37	59	30
149 .....	22	37	60	30
150 .....	23	37	60	30
151 .....	23	38	60	30
152 .....	23	38	61	30
153 .....	23	38	61	31
154 .....	23	39	61	31
155 .....	23	39	62	31
156 .....	23	39	63	31
157 .....	24	39	63	31
158 .....	24	40	63	31
159 .....	24	40	64	31
160 .....	24	40	64	32
161 .....	24	40	65	32
162 .....	24	41	65	32
163 .....	24	41	65	33
164 .....	25	41	65	33
165 .....	25	41	66	33
166 .....	25	42	66	33
167 .....	25	42	67	33
168 .....	25	42	67	34
169 .....	25	42	68	34
170 .....	26	42	68	34
171 .....	26	43	68	34
172 .....	26	43	69	34
173 .....	26	43	69	35
174 .....	26	44	69	35
175 .....	26	44	70	35
176 .....	26	44	71	35
177 .....	27	44	71	35
178 .....	27	45	71	35
179 .....	27	45	72	35
180 .....	27	45	72	36
181 .....	27	45	73	36
182 .....	27	46	73	36
183 .....	27	46	73	37
184 .....	28	46	73	37
185 .....	28	46	74	37
186 .....	28	47	74	37
187 .....	28	47	75	37
188 .....	28	47	75	38
189 .....	28	47	76	38
190 .....	29	47	76	38
191 .....	29	48	76	38
192 .....	29	48	77	38

M&IE Rate (\$)*	Breakfast	Lunch	Dinner	Incidentals
193 .....	29	48	77	39
194 .....	29	49	77	39
195 .....	29	49	78	39
196 .....	29	49	79	39
197 .....	30	49	79	39
198 .....	30	50	79	39
199 .....	30	50	80	39
200 .....	30	50	80	40
201 .....	30	50	81	40
202 .....	30	51	81	40
203 .....	30	51	81	41
204 .....	31	51	81	41
205 .....	31	51	82	41
206 .....	31	52	82	41
207 .....	31	52	83	41
208 .....	31	52	83	42
209 .....	31	52	84	42
210 .....	32	52	84	42
211 .....	32	53	84	42
212 .....	32	53	85	42
213 .....	32	53	85	43
214 .....	32	54	85	43
215 .....	32	54	86	43
216 .....	32	54	87	43
217 .....	33	54	87	43
218 .....	33	55	87	43
219 .....	33	55	88	43
220 .....	33	55	88	44
221 .....	33	55	89	44
222 .....	33	56	89	44
223 .....	33	56	89	45
224 .....	34	56	89	45
225 .....	34	56	90	45
226 .....	34	57	90	45
227 .....	34	57	91	45
228 .....	34	57	91	46
229 .....	34	57	92	46
230 .....	35	57	92	46
231 .....	35	58	92	46
232 .....	35	58	93	46
233 .....	35	58	93	47
234 .....	35	59	93	47
235 .....	35	59	94	47
236 .....	35	59	95	47
237 .....	36	59	95	47
238 .....	36	60	95	47
239 .....	36	60	96	47
240 .....	36	60	96	48
241 .....	36	60	97	48
242 .....	36	61	97	48
243 .....	36	61	97	49
244 .....	37	61	97	49
245 .....	37	61	98	49
246 .....	37	62	98	49

M&IE Rate (\$)*	Breakfast	Lunch	Dinner	Incidentals
247 .....	37	62	99	49
248 .....	37	62	99	50
249 .....	37	62	100	50
250 .....	38	62	100	50
251 .....	38	63	100	50
252 .....	38	63	101	50
253 .....	38	63	101	51
254 .....	38	64	101	51
255 .....	38	64	102	51
256 .....	38	64	103	51
257 .....	39	64	103	51
258 .....	39	65	103	51
259 .....	39	65	104	51
260 .....	39	65	104	52
261 .....	39	65	105	52
262 .....	39	66	105	52
263 .....	39	66	105	53
264 .....	40	66	105	53
265 .....	40	66	106	53

\* For M&IE rates greater than \$265, allocate 15%, 25%, and 40% of the total to breakfast, lunch, and dinner, respectively. The remainder is the incidental expense allowance.

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**Appendix C to Chapter 301—Standard Data Elements for Federal Travel****[TRAVELER IDENTIFICATION]**

<b>Group name</b>	<b>Data elements</b>	<b>Description</b>
Travel Authorization	Authorization Number	Assigned by the appropriate office.
Employee name	First Name, Middle Initial, Last Name	Agency guidelines may specify the order, e.g., last name first.
Employee Identification	Employee Number	Must use a number, e.g., SSN, vendor number, or other number that identifies the employee.
Travel Purpose Identifier	Employee Emergency	Travel related to an unexpected occurrence/event or injury/illness that affects the employee personally and/or directly that requires immediate action/attention. <i>Examples:</i> Traveler is incapacitated by illness or injury, death or serious illness of a family member (as defined in <a href="#">§300-3.1</a> or <a href="#">§301-30.2</a> ), or catastrophic occurrence or impending disaster that directly affects the employee's home. Emergency travel also includes travel for medical care while employee is TDY away from the official station ( <a href="#">Part 301-30</a> ), death of an employee/immediate family member when performing official duties away from the official station or home of record ( <a href="#">Part 303-70</a> ), medical attendant transportation ( <a href="#">Part 301-30</a> ), assistance travel for an employee with special needs ( <a href="#">Part 301-13</a> ), as well as travel for threatened law enforcement/investigative employees ( <a href="#">Part 301-31</a> ).
	Mission (Operational)	Travel to a particular site in order to perform operational or managerial activities. Travel to attend a meeting to discuss general agency operations, review status reports, or discuss topics of general interest. <i>Examples:</i> Employee's day-to-day operational or managerial activities, as defined by the agency, to include, but not be limited to: hearings, site visit, information meeting, inspections, audits, investigations, and examinations.
	Special Agency Mission	Travel to carry out a special agency mission and/or perform a task outside the agency's normal course of day-to-day business activities that is unique or distinctive. These special missions are defined by the head of agency and are normally not programmed in the agency annual funding authorization. <i>Examples:</i> These agency-defined special missions may include details, security missions, and agency emergency response/recovery such as civil, natural disasters, evacuation, catastrophic events, technical assistance, evaluations or assessments.
	Conference - Other Than Training	Travel performed in connection with a prearranged meeting, retreat, convention, seminar, or symposium for consultation or exchange of information or discussion. Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Training below). <i>Examples:</i> To participate in a planned program as a speaker/panelist or other form of presentation, host, planner, or others designated to oversee the conference or attendance with no formal role, or as an exhibitor.
	Training	Travel in conjunction with educational activities to become proficient or qualified in one or more areas of responsibility. 5 USC 4101(4) states that “‘training’ means the process of providing for and making available to an employee, and placing or enrolling the employee in a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency’s mission and performance goals.” The term “conference” may also apply to training activities that are considered to be conferences

# AMENDMENT 2010-07 NOVEMBER 29, 2010

## FEDERAL TRAVEL REGULATION

### [TRAVELER IDENTIFICATION] (CONTINUED)

Group name	Data elements	Description
		<p>under 5 CFR 410.404, which states that “agencies may sponsor an employee’s attendance at a conference as a developmental assignment under section 4110 of title 5, United States Code, when:</p> <ul style="list-style-type: none"> <li>(a) The announced purpose of the conference is educational or instructional;</li> <li>(b) More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets the definition of training in section 4101 of title 5, United States Code;</li> <li>(c) The content of the conference is germane to improving individual and/or organizational performance, and</li> <li>(d) Development benefits will be derived through the employee’s attendance.” Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Conference—Other Than Training above). <i>Examples:</i> Job required training, Internships, Intergovernmental Personnel Act, and forums.</li> </ul>
	Relocation	Travel performed in connection with a transfer from one official station to another for employees/immediate family members, as applicable. <i>Examples:</i> Permanent change of station (PCS) moves for domestic and international transferees/new appointees, tour renewal, temporary change of station (TCS), and last move home.
Travel Period	Start Date, End Date	Month, Day, Year according to agency guidelines.
Travel Type	CONUS/Domestic	Travel within continental United States.
	OCONUS/Domestic	Travel outside continental United States.
	Foreign	Travel to other countries.
Leave Indicator	Annual, Sick, Other	Identifies leave type as the reason for an interruption of per diem entitlement.
Official Station	City, State, Zip	The location where the employee regularly performs his or her duties or an invitational traveler’s home or regular place of business. If the employee’s work involves recurring travel or varies on a recurring basis, the location where the work activities of the employee’s position of record are based is considered the employee’s official station.
Residence	City, State, Zip	The geographical location where employee resides, if different from official duty station.
Payment Method	EFT	Direct deposit via electronic funds transfer.
	Treasury Check	Payment made by Treasury check.
	Imprest Fund	Payment made by Imprest Fund.
Mailing Address	Street Address, City, State, Zip	The location designated by the traveler based on agency guidelines.

### [COMMERCIAL TRANSPORTATION INFORMATION]

Group name	Data elements	Description
Transportation Payment		Method employee used to purchase transportation tickets.
Method Indicator	GTR	U.S. Government Transportation Request.
	Central Billing Account	A contractor centrally billed account.
	Government Charge Card	In accordance with and as provided by agency guidelines.
	Cash	
Transportation Payment Identification Number	Payment ID Number	A number that identifies the payment for the transportation tickets, according to agency guidelines, e.g., GTR number, Govt. contractor-issued charge card number.
Transportation Method Indicator	Air (other than coach-class) Air (coach-class) Non-contract Air, Train, Other	Common carrier used as transportation to TDY location.
Transportation in Performance of TDY or While at the TDY Location	POV, Car rental, Taxi, Other	Identifies transportation used while in the performance of TDY or while at the TDY location.

# AMENDMENT 2010-02 JUNE 4, 2010

## [TRAVEL EXPENSE INFORMATION]

<b>Group name</b>	<b>Data elements</b>	<b>Description</b>
Per Diem	Total Number of Days	The number of days traveler claims to be on per diem status, for each official travel location.
	Total Amount Claimed	The amount of money traveler claims as per diem expense.
	Lodging, Meals & Incidentals	
Travel Advance	Advance Outstanding	The amount of travel advance outstanding, when the employee files the travel claim.
	Remaining Balance	The amount of the travel advance that remains outstanding..
Subsistence	Actual Days	Total number of days the employee charged actual subsistence expenses. The number of days must be expressed as a whole number.
	Total Actual Amount	Total amount of actual subsistence expenses claimed as authorized. Actual subsistence rate, per day, may not exceed the maximum subsistence expense rate established for official travel by the Federal Travel Regulation.
Transportation Method Cost	Air (other than coach-class)	The amount of money the transportation actually cost the traveler, entered according to method of transportation.
	Air (coach-class) Non-contract Air, Train	
	Other	Bus or other form of transportation.
Transportation in Performance of TDY or While at the TDY Location	POV mileage	Total number of miles driven in POV.
	POV mileage expense	Total amount claimed as authorized based on mileage rate. Different mileage rates apply based on type and use of the POV.
	Car rental, Taxis, Other	
Constructive cost	Constructive cost	The difference between the amount authorized to spend versus the amount claimed.
Reclaim	Reclaim amount	An amount of money previously denied as reimbursement for which additional justification is now provided.
Total Claim	Total claim	The sum of the amount of money claimed for per diem, actual subsistence, mileage, transportation method cost, and other expenses.

## [ACCOUNTING AND CERTIFICATION]

<b>Group name</b>	<b>Data elements</b>	<b>Description</b>
Accounting Classification	Accounting code	Agency accounting code.
Non-Federal Source Indicator	Per Diem, Subsistence, Transportation	Indicates the type of travel expense(s) paid, in part or totally, by a non-Federal source.
Non-Federal Source Payment Method	Check, EFT, Payment "in-kind"	Total payment provided by non-Federal source according to method of payment.
Signature/Date Fields	Claimant Signature	Traveler's signature, or digital representation. The signature signifies the traveler read the "fraudulent claim/responsibility" statement.
	Date	Date traveler signed "fraudulent claim/responsibility" statement.
	Claimant Signature	Traveler's signature, or digital representation. The signature signifies the traveler read the "Privacy Act" statement.
	Date	Date traveler signed "Privacy Act" statement.
	Approving Officer Signature	Approving Officer's signature, or digital representation. The signature signifies the travel claim is approved for payment based on authorized travel.
	Date	Date Approving Officer approved and signed the travel claim.
	Certifying Officer Signature	Certifying Officer's signature, or digital representation. The signature signifies the travel claim is certified correct and proper for payment.
	Date	Date Certifying Officer signed the travel claim.

**Note to Appendix C:** Agencies must ensure that a purpose code is captured for those individuals traveling under unlimited open authorizations.

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**Appendix D to Chapter 301—Glossary of Acronyms**

ATM:	Automated Teller Machine
CAS:	Commercial Aviation Service(s)
CDW:	Collision Damage Waiver
CFR:	Code of Federal Regulations
CMTR:	Combined Marginal Tax Rate
CONUS:	Continental United States
CSRS:	Civil Service Retirement System
CTO:	Commercial Ticket Office
DOD:	Department of Defense
DOJ:	Department of Justice
DSSR:	Department of State Standardized Regulations
DTMO	Defense Travel Management Office
EFT:	Electronic Funds Transfer
ETS:	E-Gov Travel Service(s)
FAA:	Federal Aviation Administration
FAM:	Foreign Affairs Manual
FECA:	Federal Employees' Compensation Act
Fedrooms:	Enhanced Federal Premier Lodging Program (formally known as FPLP)
FEMA:	Federal Emergency Management Agency
FERS:	Federal Employees Retirement System
FHA:	Federal Housing Administration
FICA:	Federal Insurance Contribution Act
FOB:	Free On Board
FTR:	Federal Travel Regulation
FTS:	Federal Telecommunications System
GAO:	General Accounting Office
GBL:	Government Bill of Lading
GOCO:	Government Owned Contractor Operated
GPO:	Government Printing Office
GSA:	General Services Administration
GTR:	Government Transportation Request
HHG:	Household Goods
ID:	Identification
IDL:	International Date Line
IRC:	Internal Revenue Code
IRS:	Internal Revenue Service
ISSA:	Inter-service Support Agreement(s)
ITRA:	Income Tax Reimbursement Allowance
JFTR:	Joint Federal Travel Regulations
JTR:	Joint Travel Regulation
MARS:	Military Affiliate Radio System
M&IE:	Meals and Incidental Expenses
M&O:	Management and Operating
MOU:	Memorandum of Understanding
MTR:	Marginal Tax Rate
NARA:	National Archives and Records Administration
NIST:	National Institute of Standards and Technology
NTE:	Not to Exceed
OBE:	Online Self-service Booking Tool
OCONUS:	Outside the Continental United States
OGE:	Office of Government Ethics
OMB:	Office of Management and Budget
PBP&E:	Professional Books, Papers, and Equipment
PCS:	Permanent Change of Station

# **AMENDMENT 2010-05 NOVEMBER 15, 2010**

## **FEDERAL TRAVEL REGULATION**

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PDS:	Permanent Duty Station
PIN:	Personal Identification Number
PMO:	E-Gov Travel Program Management Office
POV:	Privately Owned Vehicle
PTA:	Prepaid Ticket Advice
PDTATAC:	Per Diem, Travel and Transportation Allowance Committee
Q&A:	Question and Answer
RIT:	Relocation Income Tax
SES:	Senior Executive Service
SIT:	Storage in Transit
SSN:	Social Security Number
TCS:	Temporary Change of Station
TDY:	Temporary Duty
TMC:	Travel Management Center
TMS:	Travel Management Service
TQSE:	Temporary Quarters Subsistence Expenses
U.S.:	United States
U.S.C.:	United States Code
VA:	Department of Veterans Affairs
WAE:	When Actually Employed
WTA:	Withholding Tax Allowance

## Appendix E to Chapter 301—Suggested Guidance for Conference Planning

### Terms

*Conference:* A meeting, retreat, seminar, symposium or event that involves attendee travel. The term “conference” also applies to training activities that are considered to be conferences under 5 CFR 410.404.

*Conference lodging allowance:* The rate that is up to 25 percent above the established lodging per diem rate.

*Milestone schedule:* Deadlines, which need to be reached in a progressive and orderly manner.

*Planner:* The person designated to oversee the conference.

*Planning committee:* Operational group significantly contributing to a conference’s overall success and able to fully reflect the needs of both the agency and the attendees.

### Getting Started

Depending on the size, type, and intended effect of the conference, start planning a minimum of one year in advance. Designate a planner and a planning committee.

### Planning Committee

Functions typically include, but are not limited to:

- Establishing a set of objectives.
- Developing a theme.
- Making recommendations for location, agenda, dates, and logistics, e.g., schedule, exhibits, speaker.
- Making suggestions as to who should attend.
- Serving as communications link between planners and participants.
- Evaluation and follow-up.

### Milestone Schedule

(a) Develop a milestone schedule, which is essential to conference planning, by working backward from the beginning date of the conference to include each major step. Examples include:

- Planning committee meetings.
- Preparation of mailing lists.
- Letters of invitation.
- Designation of speakers.
- Confirmation letters to speakers.
- Confirmation with site selection official.
- Preparation of agenda.
- Preparation of specification sheet.
- Location and date selection.
- Exhibits.
- Budget.
- Printing requirements.
- Signage.
- Conference information packages.

- Scheduling photographer (if planned).
  - Use of agency seal and conference logo.
  - Handicapped requirements.
  - Planning of meals and refreshments, if appropriate.
- (b) Establish completion dates for each major step.
- (c) Update and revise the schedule as needed.

### Specification Sheet

A detailed specification sheet is necessary to:

(a) Identify essential elements of a conference which typically include, but are not limited to:

- Sleeping rooms and on-site food services. It is generally best to estimate on the low side for the number of sleeping rooms and meals to be prepared. Facilities, unless there is only limited available space, are usually prepared to increase the number of sleeping rooms and meals; however, they discourage—and in some cases penalize—you if the sleeping room and meal guarantees are not met.
- Meeting rooms.
- Exhibit facilities.
- Audio-visual equipment and support services.
- Miscellaneous support services.
- Sleeping rooms with amenities, e.g., Internet access, data ports, conference call, and voice mail.

(b) Determine costs:

- *Procurement.* Bring contracting officer into the process early. All agreements and decisions should be written and agreed to by the agency-contracting officer before being sent to the facility.
- *Government per diem rates.* The government per diem rate applies to Federal attendees. Application of it to non-Federal attendees is at the discretion of the property and conference negotiator.
- *Registration fee.* Generally, the registration fee covers all direct expenditures of agency funds for planning and organization of a conference, e.g., meeting room accommodations, meals, light refreshments (if appropriate), speaker fees, publications, and materials. Anything directly relating to the conference, except liquor, can be included in the fee. To estimate the registration fee, divide the proposed budget by the estimated number of attendees.

### Budgeting

Decide how the conference expenses (other than sleeping room accommodations and individual meals) will be paid, i.e., by the attendee from a training or registration fee, or directly by the agency.

### **Conference Site Selection**

Minimize total costs, all factors considered.

### **Geographic Location**

In determining where to locate the conference, consider:

- Targeted audience.
- Total costs, including per diem, transportation, and other.
- Accessibility by car or air.
- Whether recreational activities are necessary.
- The expense of desired facility (significant savings can be achieved in off-season periods).

### **Types of Facilities**

- *Federal Government*. Use Government-owned or Government-provided conference facilities to the maximum extent possible.
- *Convention centers*. Excellent for very large meetings, trade shows and exhibits; usually located near a large number of hotels.
- *Conference centers*. Dedicated meeting facilities; good for smaller meetings when numerous breakout sessions are planned.
- *Colleges and universities*. Many have good meeting facilities and can offer sleeping accommodations when school is not in session.
- *Hotels*. Commercial facilities that may be used to meet all conference needs or just the room night needs.

### **Date Selection**

For availability and economical reasons, the best months are April, May, September, October, and November. You should book the facility as early as possible to increase the chances of getting the date you want. However, pay particular attention to commitments for September or October due to fiscal year budget considerations.

### **Considerations When Choosing a Site**

#### (a) Is the facility:

- Cost effective, e.g., are Government rates honored?
- Safe, e.g., FEMA-approved?
- Is there on-site security personnel?
- Easily reached from an airport or by car?
- Clean?
- Well run, e.g., does the staff seem to be competent and responsive?
- Laid out in a functional way?
- Large enough to supply the number of sleeping rooms required?
- Set up to provide necessary conference registration equipment?
- Handicapped accessible?

#### (b) Parking:

- Is it adequate?
- How close to the facility is it?
- Is it secure and safe?
- Is the cost separate?

#### (c) Sleeping rooms:

- Will the facility make the reservations, or are you responsible for making the reservations for participants?
- What are the facility's registration rules?
- What are departure rules?

#### (d) Functionality of meeting rooms:

- Is appropriate space available?
- What costs are involved?
- Is needed equipment available (i.e., for conference registration, faxes, phones, computers, copiers)? Do not rent equipment unless it is absolutely unrealistic to bring your own.
- Are rooms designated for agency use for the duration of the conference?
- Are there columns that can block views?
- Are ceilings high enough for audio-video equipment?
- Are rooms suitable for both classroom and/or theatre setups?
- Are there windows? Shades?
- Are there manually-controlled thermostats?
- Are rooms handicapped accessible?
- Where are electrical outlets?
- Can the rooms be darkened?
- Would it be more economical to bring audio-visual equipment?
- Does the facility want meeting schedules and room layouts in writing in advance of the conference?
- If necessary, can the rooms be entered the evening before for an early setup?
- Will the facility arrange for room setup if given a layout?
- What set-up costs are included?
- What are departure rules?

#### (e) Exhibits:

- If exhibits are planned, is suitable exhibit space available?
- Are easels available at no cost?
- What are the put-up and takedown times?
- What costs are involved?
- What about pre-delivery and after-conference arrangements?
- If exhibits are shipped, know where and to whom they are to be sent.
- If you are bringing large exhibits, determine location of loading dock, appropriate entrances and elevators.
- Are there additional handling fees?

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- Check hotel policy on posting, size and appearance of signs.

## Food and Drink

### Meals

- You can not generally use appropriated funds to pay for meals for employees at their official stations.
- Employees on TDY travel may be served meals but cannot be reimbursed for those provided at government expense.
- You should clarify in advance the appropriate per diem reduction(s) of meal(s) allowance(s) for TDY travel.
- You may pay, or reimburse an employee for meals as necessary expenses incident to an authorized training program (under the Government Employees Training Act (GETA) at 5 U.S.C. 4104(4)), if a determination has been made that essential training will be conducted during the meal.
- Work closely with the hotel to plan quality menus that fit within authorized per diem rates.
- Clarify and agree in advance to the number of meal guarantees.
- Ensure that gratuities and service charges are added to the cost of each meal, and determine the method of billing to be used (e.g., signed guarantee, collected meal tickets, or actual quantities consumed).
- Confirm menus.

### Breaks and Refreshments

Breaks should last no longer than 30 minutes and take place between meeting sessions. The following should also be considered when planning for refreshments:

- Keep in mind that everyone does not drink coffee or tea.
- You should clarify and agree in advance that coffee and pastries, if appropriate, are purchased by the gallon and dozen.
- Try to avoid a per person charge.
- Negotiate the cost into the contract.
- Be conservative in your estimates. There are seldom 100 percent of the conference participants attending any one function.
- If coffee, soft drinks, and water are not included in the fee, are they available “at cost” to the attendee?

## Account Reconciliation

It is important to request that the hotel bill be prepared in a logical and chronological sequence, and that backup data accompany the bill. Generally, the hotel will complete its accounting of the conference within two weeks of the conclusion.

## Notification

### Announcement and/or Invitations

Announcement of the planned conference should be made as early as possible, even one year in advance; invitation letters, 8 weeks in advance. They should include, but are not limited to:

- Point of contact name and telephone number.
- Registration form, card, or Internet address (include space for identifying handicapped requirements).
- Registration instructions.
- Registration deadline date.
- Detailed area map and driving instructions.
- Information on traffic patterns to avoid rush hour delays.
- Promotional brochures from the facility.
- Layout of facility including telephone numbers.
- Breakdown of costs showing any difference from travel versus training object classes, particularly meal costs, so that proper reimbursement can be made.
- Agenda with a list of speakers and topics.
- Activity schedule for spouses, domestic partners, and guests (all charges or costs attributed to spouses, domestic partners or guests must be borne by the individual attendee (not reimbursable by the Government)).
- Provide a sample travel voucher.
- Notice that conference lodging allowance applies if applicable.

## Confirmations

You should:

- Decide on the speaker(s) and the message you wish to be conveyed and obtain early commitment(s) in writing.
- Confirm conference dates/times/topics/arrival and departure times with speaker(s) and any other special guests at least 30 days in advance.
- Conduct a final planning committee meeting to confirm all plans.
- Confirm photographer’s schedule.
- Confirm hotel plans at least one day in advance.

## Facility Process

### Check-In and -Out

Streamline the process:

- Will the facility need additional personnel?
- Is electronic one-stop processing available?
- Is luggage storage and shuttle service available?
- Arrange parking for any special guests.
- Provide signage.

## Registration Process

Registration is generally the attendees' introduction to the conference. Give it special attention by:

- Using directional signs.
- Placing especially attractive or important exhibits nearby.
- Planning for late arrivals.
- Using state-of-the-art processing.
- Checking out the registration capabilities of using GSA's electronic SmartPay System.
- Providing for handicapped attendees.

## Conference Information Package

Each registrant should be given a conference information package. Used regularly during the conference, the conference information package should be accurate, beneficial, and reflect detailed information on a daily/hourly basis. If time allows, you may want to finalize the package and send it to the printer at least 4 weeks in advance of the starting date. The program will be widely used, so you may want to print twice as many copies of the program as you have expected attendees. The information package, for example, may contain:

- A list of everything in the package.
- A "welcome" letter.
- A schedule.
- Workshop agendas.
- Discussion of exhibits.
- Panelists' information.
- Photos and biographies of speakers/special guests.
- Facility layout and list of services available.
- Identify designated smoking areas.
- Special events.
- Message center information.
- Area map.
- Other pertinent material.

**Note:** Use of agency seal and conference logo may be considered for the conference package. However, the decision to use such items is strictly the judgment of agency officials.

## Miscellaneous

### Suggested Room Coordination

Plan ahead to setup:

- Staff room to handle core of activities;
- Meal functions;
- Exhibit rooms, and
- Meeting rooms—
  - Theatre or auditorium for lectures;
  - Facing speaker when note taking is important;
  - Square or U-shaped style for discussion/interaction; and

- Banquet or roundtable for discussion.

## Keeping in Touch

Plan for:

- A message center to be set up in a central location for special announcements and telephone messages.
- How to reach whomever at all times—use beepers and walkie-talkies.
- Clear identification of conference staff.
- Accommodation of physically impaired attendees with sign language or other special needs.

## Mementos

Appropriations are not available to purchase memento items for distribution to conference attendees as a remembrance of an event. Two notable exceptions to the memento or gift prohibition are under training and awards. Work closely with appropriate agency officials to make final determinations.

## Resources

The following resources may be of assistance in planning a conference:

- An agency contracting officer;
- Travel Management Centers;
- Interagency Travel Management Committee members (a forum of agency travel policy managers—for member identification, contact your agency's administrative or financial office);
- State chambers of Commerce or Visitors Bureaus;
- Local chapters of the Society of Government Meeting Professionals; and
- Private industry conference planners.

## Conclusion

### Process:

- Questionnaires, which may provide invaluable feedback about the success of your conference.
- Training certificates.
- Thank you notes to participants, facility personnel, speakers, printers, photographers, and other special contributors.
- Summary to acknowledge the accomplishments, and to convey the information discussed to a wider audience, may be an excellent promotional tool.

**Note to Appendix E:** Use of pronouns "we", "you", and their variants throughout this appendix refers to the agency.

## **FEDERAL TRAVEL REGULATION**

### **CHAPTER 302—RELOCATION ALLOWANCES**

#### **Subchapter A—Introduction**

##### **Part 302-1—General Rules**

###### **Subpart A—Applicability**

- §302-1.1—Who is eligible for relocation expense allowances under this chapter?
- §302-1.2—Who is not eligible for relocation expense allowances under this chapter?

###### **Subpart B—[Reserved]**

##### **Part 302-2—Employee Eligibility Requirements**

###### **Subpart A—General Rules**

- §302-2.1—When may I begin my transfer or reassignment?
- §302-2.2—May I relocate to my new official station before I receive a written travel authorization (TA)?
- §302-2.3—What determines my entitlements and allowances for relocation?
- §302-2.4—What is my effective transfer or appointment date?
- §302-2.5—May I relocate from a location other than the location specified in my relocation travel authorization?
- §302-2.6—May I be reimbursed for relocation expenses if I relocate to a new official station that is less than 50 miles from my old official station?

###### **—Time Limits**

- §302-2.7—When may I begin my travel and transportation after receiving authorization to do so?
- §302-2.8—When must I complete all aspects of my relocation?
- §302-2.9—If I am furloughed to perform active military duty, will I have to complete all aspects of the relocation within the time limitation?
- §302-2.10—Does the 2-year time period in §302-2.8 include time that I cannot travel and/or transport my household effects due to shipping restrictions to or from my post of duty OCONUS?
- §302-2.11—May the 2-year time limitation for completing all aspects of a relocation be extended?

###### **—Service Agreements**

- §302-2.12—What is a service agreement?
- §302-2.13—Am I required to sign a service agreement when transferring within or outside the continental United States or performing renewal agreement travel and what is the minimum period of service?
- §302-2.14—Will I be penalized for violation of my service agreement?
- §302-2.15—Must I provide my agency with my actual place of residence as soon as I accept a transfer/appointment OCONUS?
- §302-2.16—Must I sign a service agreement for a “last move home” relocation?
- §302-2.17—What happens if I fail to sign a service agreement?
- §302-2.18—Can my service agreement be voided by a subsequent service agreement?
- §302-2.19—If I have more than one service agreement, must I adhere to each agreement separately?

###### **—Advancement of Funds**

- §302-2.20—May I receive an advance of funds for my travel and transportation expenses?
- §302-2.21—What requirements must I meet to receive a travel advance?
- §302-2.22—May I receive a travel advance for separation relocation?

###### **Subpart B—Agency Responsibilities**

- §302-2.100—What internal policies must we establish before authorizing a relocation allowance?

- §302-2.101—When may we authorize reimbursement for relocation expenses?
- §302-2.102—Who must authorize and approve relocation expenses?
- §302-2.103—How must we administer the authorization for relocation of an employee?
- §302-2.104—What information must we provide on the TA?
- §302-2.105—When an employee transfers between Federal agencies, who is responsible for paying the employee's relocation expenses?
- §302-2.106—May we waive statutory or regulatory limitations relating to relocation allowances for employees relocating to/from remote or isolated locations?

—**Time Limits**

- §302-2.110—Are there time factors that we must consider for allowing an employee to complete all aspects of relocation?

## **Subchapter B—Relocation Allowances**

### **Part 302-3—Relocation Allowance by Specific Type**

#### **Subpart A—New Appointee**

- §302-3.1—Who is a new appointee?
- §302-3.2—As a new appointee or student trainee what relocation expenses may my agency pay or reimburse me for incident to a permanent change of station to my first official station?
- §302-3.3—As a new appointee, are there any expenses that my agency will not pay?
- §302-3.4—If my agency authorizes me allowances for relocation, must it pay all of the expenses listed in §302-3.2?
- §302-3.5—If I travel to my first official station before I have been appointed, will I be reimbursed for my relocation expenses?

#### **Subpart B—Transferred Employees**

- §302-3.100—What is a transferred employee?
- §302-3.101—As a transferred employee what relocation allowances must my agency pay or reimburse me for incident to a permanent change of station?

#### **Subpart C—Types of Transfers**

—**Relocation of Two or More Employed Immediate Family Members**

- §302-3.200—When a member of my immediate family who is also an employee and I are transferring to the same official station, may we both receive allowances for relocation?
- §302-3.201—If my immediate family member and I both transfer to the same official station in the interest of the Government, may we both claim the same relocation expenses?
- §302-3.202—If my immediate family member and I both transfer to the same official station, may we both claim the same relocation allowances for the same non-employee family member?
- §302-3.203—If I am transferring in the interest of the Government and my employed immediate family member(s) transfer is not in the interest of the Government, will he/she receive relocation allowances?
- §302-3.204—When an employed immediate family member and I are transferring in the interest of the Government, what information must we submit to our agency?

—**Reduction in Force Relocation**

- §302-3.205—If my transfer is involuntary (due to i.e., reduction in force, cessation, or transfer of work), is it considered to be in the interest of the Government?
- §302-3.206—If I am re-employed after a separation by reduction in force or transfer of functions, may my agency pay me a relocation allowance?

## —Overseas Assignment and Return

- §302-3.207—Am I eligible to receive relocation allowances for overseas assignment and return travel?  
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## —Overseas Tour Renewal Agreement

- §302-3.209—What is overseas tour renewal travel?  
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§302-3.211—What is an allowance for overseas tour renewal travel?  
§302-3.212—How do I know if I am eligible to receive an allowance for overseas tour renewal travel?  
§302-3.213—What allowances will I receive for tour renewal travel?  
§302-3.214—May I receive reimbursement for tour renewal travel when my travel is between two places within the United States?  
§302-3.215—Will I be reimbursed for tour renewal travel from a post of duty in Hawaii and return to a post of duty in Alaska or for such travel from a post of duty in Alaska and return to a post of duty in Hawaii?  
§302-3.216—When must I begin my first tour renewal travel from Alaska or Hawaii?  
§302-3.217—Will my family or I receive per diem for en route travel from my post of duty to my actual place of residence in the U.S.?  
§302-3.218—Are there any special circumstances when my agency may authorize me travel and transportation expenses for my tour renewal travel in Alaska or Hawaii?  
§302-3.219—Is there a limit on how many times I may receive reimbursement for tour renewal travel?  
§302-3.220—May my family and I travel to another U.S. location (other than from my actual place of residence) under my tour renewal agreement?  
§302-3.221—If I travel to another place in the U.S. (other than my actual place of residence) am I required to spend time at my actual place of residence to receive reimbursement?  
§302-3.222—Will I be reimbursed if I travel to another overseas location (instead of the U.S.)?  
§302-3.223—What happens if I violate my new service agreement under a tour renewal assignment?  
§302-3.224—If I violate my new service agreement, will the Government reimburse me for return travel and transportation to my actual place of residence?

## —Prior Return of Immediate Family Members

- §302-3.225—If my immediate family member(s) return to the U.S. before me, will I be reimbursed for transporting part of my household goods with my family and the rest of my household goods when I return?  
§302-3.226—Will the Government reimburse me if I am not eligible to return with my immediate family member(s) to the U.S. and choose to send them at my own expense?  
§302-3.227—If I become divorced from my spouse or terminate my committed relationship with my domestic partner while OCONUS will I receive reimbursement to return my former spouse or domestic partner and dependents to the U.S.?  
§302-3.228—Is my dependent who turned 21 while overseas entitled to return travel to my place of actual residence at the expense of the Government?

## Subpart D—Relocation Separation

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- §302-15.9—Must I repay property management expenses my agency paid under this part if I elect to sell my former residence in the United States at Government expense when I am transferred from my current foreign post of duty to an official station in the United States other than the one I left?
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## **SUBCHAPTER A—INTRODUCTION**

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**PART 302-1—GENERAL RULES**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a).

**Subpart A—Applicability**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

**§302-1.1 Who is eligible for relocation expense allowances under this chapter?**

You are generally eligible for relocation expense allowances under this chapter if you are:

- (a) A new appointee appointed to your first official station (as discussed in this chapter);
- (b) An employee transferring in the interest of the Government from one agency or duty station to another for permanent duty, and your new duty station is at least 50 miles distant from your old duty station (see [§302-2.6](#) of this chapter);
- (c) An employee of the United States Postal Service transferred for permanent duty, under 39 U.S.C. 1006, from the Postal Service to an agency as defined in 5 U.S.C. 5721;
- (d) An employee performing travel in accordance with your overseas tour renewal agreement (see [§§302-3.209](#) through [302-3.224](#) of this chapter);
- (e) An employee returning to his/her place of residence after completion of a prescribed tour of duty for the purposes of separation from Government service or separation from the overseas assignment for reassignment to the same or different Government agency;
- (f) A student trainee assigned to any position upon completion of college work;

(g) An employee eligible for a “last move home” benefit upon separation from the Government (and your immediate family in the event of your death prior to separation or after separation but prior to relocating);

(h) A Department of Defense overseas dependents school system teacher;

(i) A career appointee to the Senior Executive Service (SES) as defined in 5 U.S.C. 3132(a)(4), and a prior SES appointee who is returning to your official residence for separation and who will be retaining SES retirement benefits; or

(j) An employee that is being assigned to a temporary duty station in connection with long-term assignment.

**§302-1.2 Who is not eligible for relocation expense allowances under this chapter?**

You are not eligible to receive relocation expense allowances under this chapter if you are:

- (a) A Foreign Service Officer or a Federal employee transferred under the rules of the Foreign Service Act of 1980, as amended;
- (b) An officer or an employee transferred under the Central Intelligence Act of 1949, as amended;
- (c) A person whose pay and allowances are prescribed under title 37 U.S.C., “Pay and Allowances of the Uniformed Services;”
- (d) An employee of the Department of Veterans Affairs (VA) to whom 38 U.S.C. 235 applies; or
- (e) A person not covered in [§302-1.1](#).

**Subpart B—[Reserved]**

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**PART 302-2—EMPLOYEE ELIGIBILITY REQUIREMENTS**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a).

**Subpart A—General Rules**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

**§302-2.1 When may I begin my transfer or reassignment?**

You may begin your transfer or reassignment only after your agency has approved your travel authorization (TA) in writing (paper or electronic).

**§302-2.2 May I relocate to my new official station before I receive a written travel authorization (TA)?**

No, you must have the written TA (paper or electronic) before you relocate to your new official station.

**§302-2.3 What determines my entitlements and allowances for relocation?**

Your entitlements and allowances for relocation are determined by the regulatory provisions that are in effect at the time you report for duty at your new official station. However, this does not change the requirement that all aspects of a relocation must be completed by time specified in [§§302-2.7](#) through [302-2.11](#).

**§302-2.4 What is my effective transfer or appointment date?**

Your effective transfer or appointment date is the date on which you report for duty at your new or first official station, respectively.

**§302-2.5 May I relocate from a location other than the location specified in my relocation travel authorization?**

Yes, you may relocate from a place other than from where you are authorized. However, you will be required to pay all additional costs incurred for expenses above your authorized travel and transportation cost.

**§302-2.6 May I be reimbursed for relocation expenses if I relocate to a new official station that is less than 50 miles from my old official station?**

Generally no; you may not be reimbursed for relocation expenses if you relocate to a new official station that is less than 50 miles from your old official station, unless the head of the agency or designee authorizes an exception. On a case-by-case basis and having considered the following criteria, the head of your agency or designee may authorize the reim-

bursement of relocation expenses of less than 50 miles when he/she determines that it is in the interest of the Government; and

(a) The one way commuting pattern between the old and new official station increases by at least 10 miles but no more than 50 miles; or

(b) There is an increase in the commuting time to the new official station; or

(c) A financial hardship is imposed due to increased commuting costs.

**Time Limits****§302-2.7 When may I begin my travel and transportation after receiving authorization to do so?**

You and your immediate family member(s) may begin travel immediately upon receipt of your authorized TA.

**§302-2.8 When must I complete all aspects my relocation?**

You and your immediate family member(s) must complete all aspects of your relocation within two years from the effective date of your transfer or appointment, except as provided in [§302-2.9](#) or [302-2.10](#).

**§302-2.9 If I am furloughed to perform active military duty, will I have to complete all aspects of the relocation within the time limitation?**

No, if you are furloughed to perform active military duty, the 2-year period to complete all aspects of relocation is exclusive of time spent on furlough for active military service.

**§302-2.10 Does the 2-year time period in [§302-2.8](#) include time that I cannot travel and/or transport my household effects due to shipping restrictions to or from my post of duty OCONUS?**

No, the 2-year time period in [§302-2.8](#) does not include time that you cannot travel and/or transport your household effects due to shipping restriction to or from your post of duty OCONUS.

**§302-2.11 May the 2-year time limitation for completing all aspects of a relocation be extended?**

Yes, the 2-year time limitation for completing all aspects of a relocation may be extended by your Agency for up to 2 additional years, but only if you have received an extension under [§302-11.22](#).

**Service Agreements****§302-2.12 What is a service agreement?**

A service agreement is a written agreement between you and your agency, signed by you and an agency representative, stating that you will remain in the service of the Government for a period of time as specified in §302-2.13, after you have relocated.

**§302-2.13 Am I required to sign a service agreement when transferring within or outside the continental United States or performing renewal agreement travel and what is the minimum period of service?**

Yes, you are required to sign a service agreement when transferring within or outside the continental United States or performing renewal agreement travel. The minimum periods of service are:

- (a) Within the continental United States for a period of service of not less than 12 months following the effective date of your transfer;
- (b) Outside the continental United States for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of transfer;
- (c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code; and
- (d) For renewal agreement travel a period of not less than 12 months from the date of return to the same or different overseas official station.

**§302-2.14 Will I be penalized for violation of my service agreement?**

Yes, if you violate a service agreement (other than for reasons beyond your control and which must be accepted by your agency), you will have incurred a debt due to the Government and you must reimburse all costs that your agency has paid towards your relocation expenses including withholding tax allowance (WTA) and relocation income tax (RIT) allowance.

**§302-2.15 Must I provide my agency with my actual place of residence as soon as I accept a transfer/appointment OCONUS?**

Yes, if you accept a transfer/appointment to an OCONUS location, you must immediately provide your agency with the information needed to determine your actual place of residence and to document it into your service agreement.

**§302-2.16 Must I sign a service agreement for a “last move home” relocation?**

No, you do not need to sign a service agreement for a “last move home” relocation.

**§302-2.17 What happens if I fail to sign a service agreement?**

If you fail to sign a service agreement, your agency will not pay for your relocation expenses.

**§302-2.18 Can my service agreement be voided by a subsequent service agreement?**

No, service agreements which are already in effect cannot be voided by subsequent service agreements.

**§302-2.19 If I have more than one service agreement, must I adhere to each agreement separately?**

Yes, service agreements can not be grouped together and must be adhered to separately. Each agreement is in effect for the period specified in the agreement.

**Advancement of Funds****§302-2.20 May I receive an advance of funds for my travel and transportation expenses?**

Yes, you may receive an advance of funds for your travel and transportation expenses, as prescribed by your agency, except for overseas tour renewal agreement travel.

**§302-2.21 What requirements must I meet to receive a travel advance?**

Your relocation travel authorization must authorize you to receive a travel advance.

**§302-2.22 May I receive a travel advance for separation relocation?**

Yes, you may receive a travel advance if approved by your agency.

**Subpart B—Agency Responsibilities**

**Note to Subpart B:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-2.100 What internal policies must we establish before authorizing a relocation allowance?**

Before authorizing a relocation allowance, you must set internal policies that determine:

- (a) How you will implement the governing policies throughout this part;
- (b) How you will determine when a relocation is in the best interest of the Government;
- (c) When you will allow a travel advance for relocation expenses;
- (d) Who will authorize and approve relocation travel;
- (e) Under what additional circumstances will you require an employee to sign a service agreement; and
- (f) Who is required to sign a service agreement.

**§302-2.101 When may we authorize reimbursement for relocation expenses?**

You may authorize reimbursement for relocation expenses:

- (a) When you have determined that an employee's permanent change of station is in the best interest of the Government;
- (b) Only after an employee has signed a service agreement to remain in service for the period specified in [§302-2.13](#); and
- (c) When you have determined that the employee's relocation is incident to his/her change of official station.

**§302-2.102 Who must authorize and approve relocation expenses?**

The agency head or his/her designee must authorize and approve relocation expenses.

**§302-2.103 How must we administer the authorization for relocation of an employee?**

To administer the authorization for relocation of an employee, you must:

- (a) Issue an employee a TA for relocation before he/she transfers to his/her new official station;
- (b) Inform the employee of his/her transfer within a time-frame that will provide him/her sufficient time for preparation;
- (c) Establish timeframes on when employees must submit a TA request; and
- (d) Provide new employees with the applicable limitations of their travel benefits.

**§302-2.104 What information must we provide on the TA?**

On the TA, you must state the:

- (a) Specific allowances that the employee is authorized; and
- (b) Procedures that the employee is authorized to follow.

**§302-2.105 When an employee transfers between Federal agencies, who is responsible for paying the employee's relocation expenses?**

When an employee transfers between Federal agencies, all allowable expenses must be paid from the funds of the agency that the employee is transferring to. However, in the case of a reduction in force or transfer of function, an agreement may be made between the agencies concerned as to what relocation allowances will be paid by either agency or split between them. This should include the payment of expenses for the extended storage of the employee's household goods when assigned to an isolated permanent duty station within CONUS or a transfer to, from, or between foreign countries.

**§302-2.106 May we waive statutory or regulatory limitations relating to relocation allowances for employees relocating to/from remote or isolated locations?**

Yes, the agency head or his/her designee may waive any statutory or regulatory limitations for employees relocating (to/from a remote or isolated location) when determining that failure to waive the limitation would cause an undue hardship on the employee.

**Time Limits**

**§302-2.110 Are there time factors that we must consider for allowing an employee to complete all aspects of relocation?**

Yes, you should encourage employees to begin travel as soon as possible after authorization of travel is approved and inform employees that they must complete all aspects of relocation within a 2-year period from his/her effective date of transfer or appointment, unless the employee's 2-year period is extended to include:

- (a) Time spent on military furlough;
- (b) Delays caused by overseas shipping or other restrictions; or
- (c) An extension for completion of residence transaction (see [§302-11.22](#) of this chapter).

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## **SUBCHAPTER B—RELOCATION ALLOWANCES**

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## PART 302-3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a).

### Subpart A—New Appointee

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

#### §302-3.1 Who is a new appointee?

A new appointee is:

- (a) An individual who is employed with the Federal Government for the very first time (including an individual who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), and is appointed in the same fiscal year as the Presidential inauguration);
- (b) An employee who is returning to the Government after a break in service (except an employee separated as a result

of reduction in force or transfer of functions and is re-employed within one year after such action); or

- (c) A student trainee assigned to the Government upon completion of his/her college work.

#### §302-3.2 As a new appointee or student trainee what relocation expenses may my agency pay or reimburse me for incident to a permanent change of station to my first official station?

As a new appointee or student trainee being assigned to a first official station your agency may or may not pay or reimburse you the relocation expenses indicated for the type of transfer in Tables A and B of this section. However, once the decision is made to pay or reimburse your relocation expenses, all mandatory relocation allowances are reimbursed, unless otherwise stated in the applicable parts of this chapter.

**TABLE A: ASSIGNED TO FIRST OFFICIAL STATION IN THE CONTINENTAL UNITED STATES (CONUS)**

Column 1— Relocation allowances that agency must pay or reimburse	Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse
(1) Transportation of employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Shipment of privately owned vehicle (POV) ( <a href="#">Subpart B of Part 302-9</a> of this chapter).
(2) Per diem for employee only ( <a href="#">Part 302-4</a> of this chapter).	
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	
(4) Extended storage of household goods ( <a href="#">Part 302-8</a> of this chapter). <sup>1</sup>	
(5) Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods ( <a href="#">Part 302-10</a> of this chapter).	

<sup>1</sup> Note to Column 1, Item 4: Only when assigned to a designated isolated official station in CONUS.

**TABLE B: ASSIGNED TO FIRST OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation of employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Shipment of privately owned vehicle (POV) ( <a href="#">Part 302-9</a> of this chapter).
(2) Per diem employee only ( <a href="#">Part 302-4</a> ).	(2) Temporary quarters subsistence expense (TQSE) is not authorized in a foreign area, however, you may be entitled to the following under the Department of State Standardized Regulations (Government Civilians-Foreign Areas) which is available from the Superintendent of Documents, Washington, DC 20402. (a) Foreign Transfer Allowance (FTA) (Subsistence Expense) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for a official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence allowance (TQSA) when a transfer is authorized to a foreign area. (c) The miscellaneous expense portion of the FTA is authorized incident to first official station travel to a foreign area.
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	(3) Use of relocation service companies only when transfer is to Alaska or Hawaii ( <a href="#">Part 302-12</a> of this chapter).
(4) Extended storage of household goods ( <a href="#">Part 302-8</a> of this chapter).	(4) Home marketing incentives only when transfer is to a non-foreign OCONUS area ( <a href="#">Part 302-15</a> of this chapter).

**§302-3.3 As a new appointee, are there any expenses that my agency will not pay?**

Yes, as a new employee, your agency will not pay for expenses that are not listed in [§302-3.2](#) (e.g., per diem for family, cost of househunting trip, miscellaneous expense allowance, etc.).

**§302-3.4 If my agency authorizes me allowances for relocation, must it pay all of the expenses listed in [§302-3.2](#)?**

Yes, if your agency authorizes you allowances for relocation, it must pay all of the expenses listed in [§302-3.2](#).

**§302-3.5 If I travel to my first official station before I have been appointed, will I be reimbursed for my relocation expenses?**

Generally, you may not be reimbursed for relocation expenses incurred before you have been appointed to a Federal position and signed an agreement to remain in Government service for 12 months after appointment. However there is an exception for appointees who have performed Presidential transition activities. Such appointees may be reimbursed allowable travel and transportation expenses incurred at any time following the most recent Presidential election once they

have signed a service agreement. However, appointment must occur in the same fiscal year as the Presidential transition activities.

**Subpart B—Transferred Employees****§302-3.100 What is a transferred employee?**

A transferred employee is an employee who transfers from one official station to another. This may also include employees separated as a result of reduction in force or transfer of functions who are re-employed within one year after such separation.

**§302-3.101 As a transferred employee what relocation allowances must my agency pay or reimburse me for incident to a permanent change of station?**

As a transferred employee there are mandatory and discretionary relocation expenses. Once an agency decision is made to pay or reimburse relocation expenses indicated for the type of transfer in tables (A) through (I) of this section, all the mandatory allowance must be paid or reimbursed, unless otherwise stated in the applicable parts. The discretionary relocation allowances indicated in tables (A) through (I) of this section may or may not be paid by the agency.

**TABLE A: TRANSFER BETWEEN OFFICIAL STATIONS IN THE CONTINENTAL UNITED STATES (CONUS)**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation & per diem for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Househunting per diem & transportation, employee & spouse only ( <a href="#">Part 302-5</a> of this chapter).
(2) Miscellaneous moving expense ( <a href="#">Part 302-16</a> of this chapter).	(2) Temporary quarters subsistence expense (TQSE) ( <a href="#">Part 302-6</a> of this chapter).
(3) Sell or buy residence transactions or lease termination expenses ( <a href="#">Part 302-11</a> of this chapter).	(3) Shipment of privately owned vehicle (POV) ( <a href="#">Subpart B of Part 302-9</a> of this chapter).
(4) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	(4) Use of a relocation services company.
(5) Extended storage of household goods ( <a href="#">Part 302-8</a> of this chapter). <sup>1</sup>	(5) Property management services ( <a href="#">Part 302-15</a> of this chapter).
(6) Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods ( <a href="#">Part 302-10</a> of this chapter).	(6) Home marketing incentives ( <a href="#">Part 302-14</a> of this chapter).
(7) Relocation income tax allowance (RITA) ( <a href="#">Part 302-17</a> of this chapter).	

<sup>1</sup> **Note to Column 1, Item 5:** Only when assigned to a designated isolated official station in CONUS.

**TABLE B: TRANSFER FROM CONUS TO AN OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation & per diem for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Temporary quarters subsistence expense (TQSE) is not authorized in a foreign area, however, you may be entitled to the following under the Department of State Standardized Regulations (DSSR) (Government Civilians-Foreign Areas): (a) A Foreign Transfer Allowance (FTA) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for a official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence allowance (TQSA).
(2) Miscellaneous expense allowance ( <a href="#">Part 302-16</a> of this chapter).	(2) Property management services ( <a href="#">Part 302-15</a> of this chapter).
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	(3) Shipment of a privately owned vehicle ( <a href="#">Part 302-9</a> of this chapter).
(4) Extended storage of household goods ( <a href="#">Part 302-8</a> of this chapter).	(4) Use of relocation service companies when transfer is to Alaska or Hawaii ( <a href="#">Part 302-12</a> of this chapter).
(5) Relocation income tax allowance (RITA) ( <a href="#">Part 302-17</a> of this chapter). <sup>1</sup>	(5) Home marketing incentives when transfer is to Alaska or Hawaii ( <a href="#">Part 302-15</a> of this chapter).

<sup>1</sup> **Note to Column 1, Item 5:** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former non-foreign area official station, an employee is transferred in the interest of the Government to a different non-foreign area official station than from the official station from which transferred when assigned to the foreign official station.

**TABLE C: TRANSFER FROM OCONUS OFFICIAL STATION TO AN OFFICIAL STATION IN CONUS**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation & per diem for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Shipment of a privately owned vehicle ( <a href="#">Part 302-9</a> of this chapter).
(2) Temporary quarters subsistence expense (TQSE) ( <a href="#">Part 302-6</a> of this chapter). <sup>1</sup>	
(3) Miscellaneous expense allowance ( <a href="#">Part 302-16</a> of this chapter).	
(4) Sell & buy residence transaction expenses or lease termination expenses ( <a href="#">Part 302-11</a> of this chapter). <sup>2</sup>	
(5) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	
(6) Extended storage of household goods only when assigned to a designated isolated official station in CONUS ( <a href="#">Part 302-8</a> of this chapter).	
(7) Relocation income tax allowance (RITA) ( <a href="#">Part 302-17</a> of this chapter).	

<sup>1</sup> **Note to Column 1, Item 2:** A TQSA under the DSSR may be authorized preceding final departure subsequent to the necessary vacating of residence quarters.

<sup>2</sup> **Note to Column 1, Item 4:** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former non-foreign area official station, an employee is transferred in the interest of the Government to a different non-foreign area official station than from the official station from which transferred when assigned to the foreign official station.

**TABLE D: TRANSFER BETWEEN OCONUS OFFICIAL STATIONS**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation & per diem for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Shipment of a privately owned vehicle (POV) ( <a href="#">Part 302-9</a> of this chapter).
(2) Temporary quarters subsistence expense (TQSE) ( <a href="#">Part 302-6</a> of this chapter). <sup>1</sup>	(2) Property management services ( <a href="#">Part 302-15</a> of this chapter).
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	
(4) Miscellaneous expense allowance ( <a href="#">Part 302-16</a> of this chapter).	
(5) Extended storage of household goods ( <a href="#">Part 302-8</a> of this chapter).	
(6) Relocation income tax allowance (RITA) ( <a href="#">Part 302-17</a> of this chapter).	

<sup>1</sup> **Note to Column 1, Item 2:** TQSA may be authorized under the DSSR.

**TABLE E: TOUR RENEWAL AGREEMENT TRAVEL**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	
(2) Per diem for employee only ( <a href="#">Part 302-4</a> of this chapter).	

**TABLE F: RETURN FROM OCONUS OFFICIAL STATION TO PLACE OF ACTUAL RESIDENCE FOR SEPARATION**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Shipment of a privately owned vehicle (POV) ( <a href="#">Part 302-9</a> of this chapter).
(2) Per diem for employee only ( <a href="#">Part 302-4</a> of this chapter).	
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	

**TABLE G: LAST MOVE HOME FOR SES CAREER APPOINTEES UPON SEPARATION**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Shipment of privately owned vehicle (POV) ( <a href="#">Subpart B of Part 302-9</a> of this chapter).
(2) Per diem for employee only ( <a href="#">Part 302-4</a> of this chapter).	
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	
(4) Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods ( <a href="#">Part 302-10</a> of this chapter).	

**TABLE H: TEMPORARY CHANGE OF STATION (TCS)**

<b>Column 1— Relocation allowances that agency must pay or reimburse</b>	<b>Column 2— Relocation allowances that agency has discretionary authority to pay or reimburse</b>
(1) Transportation & per diem for employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).	(1) Househunting trip expenses ( <a href="#">Part 302-5</a> of this chapter).
(2) Miscellaneous expense allowance ( <a href="#">Part 302-16</a> of this chapter).	(2) Temporary quarters subsistence expense (TQSE) ( <a href="#">Part 302-6</a> of this chapter).
(3) Transportation & temporary storage of household goods ( <a href="#">Part 302-7</a> of this chapter).	
(4) Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods ( <a href="#">Part 302-10</a> of this chapter).	
(5) Transportation of a privately owned vehicle (POV) ( <a href="#">Subpart B of Part 302-9</a> of this chapter).	
(6) Relocation income tax allowance (RITA) ( <a href="#">Part 302-17</a> of this chapter).	
(7) Property management services ( <a href="#">Part 302-15</a> of this chapter).	

**TABLE I: ASSIGNMENT UNDER THE GOVERNMENT EMPLOYEES TRAINING ACT (5 U.S.C. 4109)<sup>1</sup>**

(1) Transportation of employee & immediate family member(s) ( <a href="#">Part 302-4</a> of this chapter).
(2) Per Diem for employee ( <a href="#">Part 302-4</a> of this chapter).
(3) Movement of household goods & temporary storage ( <a href="#">Part 302-7</a> of this chapter).

<sup>1</sup> Note to Table I: The allowances listed in Table I may be authorized in lieu of per diem or actual expense allowances. This is not considered a permanent change of station.

## **Subpart C—Types of Transfers**

### **Relocation of Two or More Employed Immediate Family Members**

#### **§302-3.200 When a member of my immediate family who is also an employee and I are transferring to the same official station, may we both receive allowances for relocation?**

Yes, if you and an immediate family member(s) are both employees and are transferring to the same official station in the interest of the Government, the allowances under this chapter apply either to:

- (a) Each employee separately and the other is not eligible as an immediate family member(s); or
- (b) Only one of the employees considered as head of the household and the other is eligible as an immediate family member(s) on the first employee's TA.

#### **§302-3.201 If my immediate family member and I both transfer to the same official station in the interest of the Government, may we both claim the same relocation expenses?**

No, when separate allowances are authorized under this section, the employing agency or agencies shall not make duplicate reimbursement for the same claimed expenses.

#### **§302-3.202 If my immediate family member and I both transfer to the same official station, may we both claim the same relocation allowances for the same non-employee family member?**

No, when both you and your immediate family member transfer in the interest of the Government, you must provide your agency with the name(s) of non-employee family member(s) who will receive allowances under each of your TA. Only one of you may claim allowances for a non-employee member(s) of your immediate family (non-employee members may only be on one TA).

#### **§302-3.203 If I am transferring in the interest of the Government and my employed immediate family member(s) transfer is not in the interest of the Government, will he/she receive relocation allowances?**

Yes, your employed immediate family member(s) whose transfer is not in the interest of the Government will receive relocation allowances, but solely as a member of your immediate family.

#### **§302-3.204 When an employed immediate family member and I are transferring in the interest of the Government, what information must we submit to our agency?**

When you and an employed immediate family member are transferring in the interest of the Government, you both must provide:

- (a) A signed document stating which method of authorization you select (separate or one single authorization); and
- (b) Your agency with a written and signed copy of the names of which non-employee member(s) will receive allowances under your TA; if you select to receive separate TAs.

## **Reduction in Force Relocation**

#### **§302-3.205 If my transfer is involuntary (due to i.e., reduction in force, cessation, or transfer of work), is it considered to be in the interest of the Government?**

Yes, an involuntary transfer (i.e., due to reduction in force, cessation, or transfer of work) is considered to be in the interest of the Government.

#### **§302-3.206 If I am re-employed after a separation by reduction in force or transfer of functions, may my agency pay me a relocation allowance?**

Yes, if you are re-employed after a separation by reduction in force or transfer of function, your agency may pay you a relocation allowance under the conditions of this chapter if:

- (a) You are employed within one year of your involuntary separation date;
- (b) Your new appointment is not temporary; and
- (c) Your new appointment is at a different duty station from where your separation occurred and meets the mileage criteria in [§302-2.6](#) of this chapter for short distance relocation.

## **Overseas Assignment and Return**

#### **§302-3.207 Am I eligible to receive relocation allowances for overseas assignment and return travel?**

You may be eligible to receive relocation allowances for overseas assignment and return travel if you are:

- (a) An employee transferring to, from, or between official stations OCONUS; or
- (b) A new appointee to a position OCONUS and at the time of your appointment your residence is in an area other than your post of duty.

#### **§302-3.208 What relocation expenses will my agency pay for my overseas assignment and return?**

To determine what relocation expenses your agency will pay for your overseas assignment and return, see:

- (a) [§302-3.2](#) if you are a new appointee; or
- (b) [§302-3.101](#) if you are a transferred employee.

**Overseas Tour Renewal Agreement**

**§302-3.209 What is overseas tour renewal travel?**

Overseas tour renewal travel refers to travel of you and your immediate family returning to your home in the continental U. S., Alaska, or Hawaii between overseas tours of duty. See [§302-3.222](#) for travel to an actual place of residence in other than the United States.

**§302-3.210 What is an overseas tour of duty?**

An overseas tour of duty is an assignment to a post of duty outside the continental United States, Alaska or Hawaii.

**§302-3.211 What is an allowance for overseas tour renewal travel?**

An allowance for overseas tour renewal travel is a reimbursement for you and your immediate family of roundtrip travel and transportation expenses between your overseas post of duty and your actual place of residence in the U.S.

**§302-3.212 How do I know if I am eligible to receive an allowance for overseas tour renewal travel?**

You are eligible to receive an allowance for overseas tour renewal travel if:

- (a) You are on an overseas assignment, and you have completed your tour of duty and satisfactorily completed your service agreement time period; and
- (b) You are on an overseas assignment and you have signed a new service agreement to remain at your overseas post or to transfer to another overseas post of duty; or
- (c) You meet the requirements and are eligible for tour renewal travel from Alaska or Hawaii under [§302-3.214](#).

**§302-3.213 What allowances will I receive for tour renewal travel?**

For tour renewal travel, you will receive payment for those authorized expenses as stated in item 5 of Table A and item 4 of Table B of [§302-3.101](#).

**§302-3.214 May I receive reimbursement for tour renewal travel when my travel is between two places within the United States?**

You may only receive reimbursement for tour renewal travel when your tours are between two places within the U.S. if you are an employee who is traveling from Alaska or Hawaii, and:

- (a) You will continue to serve consecutive tours of duty within the same state from which you're traveling, and on September 8, 1982 you were:
  - (1) Serving your tour in one of these areas and have continued to do so; or
  - (2) En route to a post of duty in Alaska or Hawaii under a written service agreement to serve a tour of duty; or

(3) In the process of performing a tour renewal travel and has since then entered into another tour of duty in Alaska or Hawaii;

(b) Tour renewal agreement travel for recruiting or retention purposes is limited to two round trips beginning within 5 years after the date the employee first begins any period of consecutive tours of duty in Alaska or Hawaii. Employees shall be advised in writing of this limitation; or

(c) You are traveling due to your agency's mission to recruit or retain you as an employee to fulfill a position that requires a special skilled employee or to fill a position in a remote area.

**§302-3.215 Will I be reimbursed for tour renewal travel from a post of duty in Hawaii and return to a post of duty in Alaska or for such travel from a post of duty in Alaska and return to a post of duty in Hawaii?**

No, you will not be reimbursed for tour renewal travel unless your return travel is to a post of duty in the same State that you traveled from.

**§302-3.216 When must I begin my first tour renewal travel from Alaska or Hawaii?**

You must begin your first tour renewal travel within 5 years of your first consecutive tours in either Alaska or Hawaii.

**§302-3.217 Will my family or I receive per diem for en route travel from my post of duty to my actual place of residence in the U.S.?**

No, your family will not receive per diem for en route travel from your post of duty to your actual place of residence in the U.S. and return to the same or a different post of duty.

**§302-3.218 Are there any special circumstances when my agency may authorize me travel and transportation expenses for my tour renewal travel in Alaska or Hawaii?**

Other than as specified in §§302-3.209 through [302-3.226](#), your agency head will only authorize travel and transportation expenses for your tour renewal travel in Alaska or Hawaii if it determines that:

- (a) Agency staffing needs are required to recruit or retain employees at a post of duty in Alaska or Hawaii; or
- (b) Your agency is in need to recruit employees with special skills and knowledge and/or to fill positions in remote areas.

**§302-3.219 Is there a limit on how many times I may receive reimbursement for tour renewal travel?**

(a) If you are stationed in a foreign area or in an area other than Alaska or Hawaii, your agency may reimburse you for

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one overseas tour renewal trip for each time you complete your service agreement, which is related to your post of duty.

(b) For recruiting and retention purposes of consecutive tours served within Alaska and Hawaii, your agency may reimburse you a maximum of two round trips which must begin within 5 years after the date of your first tour.

**§302-3.220 May my family and I travel to another U.S. location (other than from my actual place of residence) under my tour renewal agreement?**

Yes, you and your family may travel to another U.S. location (other than from your actual place of residence) under your tour renewal agreement. However, your agency will only reimburse you for the amount of authorized expenses from your post of duty to your actual place of residence and return (as appropriate) on a usually traveled route.

**Note to §302-3.220:** If your actual place of residence is located in the U.S., you and your family must spend a substantial amount of time in the U.S. in order to receive reimbursement.

**§302-3.221 If I travel to another place in the U.S. (other than my actual place of residence) am I required to spend time at my actual place of residence to receive reimbursement?**

No, you are not required to spend time at your actual place of residence to receive reimbursement if you travel to another place in the U.S. (other than your actual place of residence).

**§302-3.222 Will I be reimbursed if I travel to another overseas location (instead of the U.S.)?**

If you travel to another overseas location (instead of the U.S.), you will be reimbursed only if your actual residence is within that country in which you are taking your leave, and then you will only be reimbursed your authorized travel and transportation expenses. You will have to pay any expense(s) above your authorized amount.

**§302-3.223 What happens if I violate my new service agreement under a tour renewal assignment?**

If you fail to complete your period of service under your new service agreement for reasons that are not acceptable to your agency, you must pay the Government:

(a) All transportation and per diem expenses that you received during your service agreement period for tour renewal travel of you and your immediate family;

(b) Transportation expenses for family members who traveled directly from your former post of duty to your current post of duty; and

(c) All transportation expenses for shipment of household goods from your former post to your current post of duty.

**§302-3.224 If I violate my new service agreement, will the Government reimburse me for return travel and transportation to my actual place of residence?**

If you violate your new service agreement, the Government will reimburse you for return travel and transportation to your actual place of residence only if you did not receive all of your allowances under a previous service agreement in which you successfully completed your required period of service. The Government will then authorize you reimbursement cost for return travel and transportation expenses from your former post of duty to your actual place of residence. If there is any additional cost you must pay the difference.

**Prior Return of Immediate Family Members****§302-3.225 If my immediate family member(s) return to the U.S. before me, will I be reimbursed for transporting part of my household goods with my family and the rest of my household goods when I return?**

Yes, if your family member(s) return to the U.S. before you, you will be reimbursed for transporting part of your household goods with your family and the rest of the household goods when you return as long as the combined weight of the two shipments does not exceed your total authorized weight limit.

**§302-3.226 Will the Government reimburse me if I am not eligible to return with my immediate family member(s) to the U.S. and choose to send them at my own expense?**

Yes, if you pay for the prior return of your eligible immediate family member(s), you will be reimbursed when you become eligible for return travel and transportation, you must provide your agency with all receipts and documentation to support your cost. Your agency will then reimburse your expenses, not to exceed your authorized allowance.

**§302-3.227 If I become divorced from my spouse or terminate my committed relationship with my domestic partner while OCONUS will I receive reimbursement to return my former spouse or domestic partner and dependents to the U.S.?**

Yes, if you become divorced from your spouse or terminate your committed relationship with your domestic partner while OCONUS, you will receive reimbursement to return your former spouse or domestic partner and dependents to their place of actual residence within or outside CONUS.

**§302-3.228 Is my dependent who turned 21 while overseas entitled to return travel to my place of actual residence at the expense of the Government?**

Your dependent who turned 21 while overseas is entitled to return travel to your place of actual residence at the expense of the Government only if your dependent traveled overseas as your dependent under your TA, but not beyond the end of your current agreed tour of duty.

**Subpart D—Relocation Separation**

**Overseas to U.S. Return for Separation**

**§302-3.300 Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS?**

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

**§302-3.301 May I transport my household goods to a location other than my actual place of residence when I separate from the Government?**

Yes, if you have successfully completed your service agreement, you may transport your household goods to a location other than your actual place of residence when you separate from the Government. However, the cost cannot exceed what it would cost to your actual place of residence. Any additional cost will be borne by you.

**§302-3.302 May my agency pay for my immediate family member(s) and my household goods to be returned to the U.S. before I complete my service agreement?**

Yes, your agency may pay for your immediate family member(s) and your household goods to be returned to the U.S. before you complete your service agreement. However, your reason for not completing your service agreement must be determined by your agency as compassionate in nature or for circumstances beyond your control.

**§302-3.303 May I claim reimbursement for the return of my immediate family member(s) or household goods more than once under one service agreement?**

No, you cannot claim reimbursement for the return of your immediate family member(s) or household goods more than once under one service agreement.

**SES Separation for Retirement**

**§302-3.304 Who is entitled to SES separation relocation allowances?**

You are entitled to SES separation relocation allowances if you meet the conditions in [§302-3.307](#) and you are:

(a) A career appointee to the SES as defined in 5 U.S.C. 3132(a)(4); or

(b) A non-SES appointee who elects to retain SES retirement benefits and:

(1) Has a basic rate of pay at Level V of the Executive Schedule or higher; or

(2) Was previously a career appointee in the SES; or

(3) Elected under 5 U.S.C. 3392(c) to retain SES retirement benefits; or

(c) A Medical Center Director who:

(1) Served as a director of a Department of Veterans Affairs medical center under 38 U.S.C. 4103(a)(8) as in effect on November 17, 1988; or

(2) Separated from Government service on or after October 2, 1992; or

Is not covered in [paragraph \(a\)](#) or [\(b\)](#) of this section; or

(d) An immediate family member of an SES employee who died:

(1) In Government service on or after January 1, 1994; or

(2) After separating from Government service but before travel and/or transportation authorized under this sub-part were completed.

**§302-3.305 Who is not eligible for SES separation relocation expense allowances?**

You are not eligible for SES separation relocation expense allowances if:

(a) You are a career appointee to an SES position, and your appointment is a limited term, limited emergency, or a noncareer appointment. (See 5 U.S.C. 3132(a)(5) through (7)); or

(b) You are an appointee to the Government but do not meet the criteria status within [§302-3.304](#).

**§302-3.306 If I meet the conditions in [§302-3.307](#), what expenses am I allowed under separation for retirement travel?**

If you meet the conditions in [§302-3.307](#), see item 7 of Tables A and C in [§302-3.101](#).

**§302-3.307 Under what conditions may I receive separation relocation travel for my family and me?**

You may receive separation relocation travel for you and your family if:

(a) You are a career appointee as defined in 5 U.S.C. 3132(a)(4), and you were transferred or reassigned geographically in the interest of and at the expense of the Government from one official station to another for permanent duty from:

(1) An SES career appointment to another SES career appointment; or

(2) An SES career appointment to an appointment outside the SES at a rate of pay equal to or higher than Level V of the Executive Schedule, and the employee elects to retain SES retirement benefits under 5 U.S.C. 3392; or

(3) A non-SES career appointment at the time of your transfer or assignment, which includes an appointment in a

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civil service position outside the SES, to an SES career appointment;

(b) At the time of the transfer or reassignment:

(1) You were eligible to receive an annuity for optional retirement under section 8336(a), (b), (c), (e), (f), or (j) or subchapter III of chapter 83 (Civil Service Retirement System (CSRS)) or under section 8412 of subchapter II of chapter 84 (Federal Employees Retirement System (FERS)) of title 5 U.S.C.; or

(2) You were within 5 years of eligibility to receive an annuity for optional retirement under one of the authorities in paragraph (b)(1) of this section; or

(3) You were eligible to receive an annuity based on discontinued service retirement or early voluntary retirement under an OPM authorization, under section 8336(d) of subchapter III of chapter 83, or under 8414(b) of subchapter II of chapter 84 of title 5 U.S.C.;

(c) You separate from Federal service on or after September 22, 1988;

(d) You are eligible to receive an annuity upon separation (or, in the case of death, you met the requirements for being considered eligible to receive an annuity, as of the date of death) under the provisions of subchapter III of chapter 83 (CSRS) or chapter 84 (FERS) of title 5 U.S.C., including an annuity based on optional retirement, discontinued service retirement, early voluntary retirement under an OPM authorization, or disability retirement; and

(e) You have not previously received separation relocation benefits from the Government for retirement.

**§302-3.308 Do I have to provide my agency with any special documents before receiving reimbursement for moving expenses?**

Yes, before receiving reimbursement for moving expenses, you must submit a request to your agency for authorization and approval of your moving expenses with your tentative moving dates and the origin and destination location of your planned move, within the timeframe and format specified by your agency.

**§302-3.309 Where should my travel and transportation begin?**

Your travel and shipment of your HHG should begin from your last official station.

**§302-3.310 Where will I be authorized to separate?**

You will be authorized to separate at the place where you have chosen to reside within the United States.

**§302-3.311 May I receive reimbursement for travel and transportation from an alternate location other than the duty station?**

You will only be reimbursed for expenses up to the cost of travel and transportation expenses from your authorized official station to the place in the U.S. you have elected to reside. Any additional cost you will have to pay.

**§302-3.312 Upon separation, if I elect to reside in a different geographical area which is less than 50 miles from my official station, will I receive reimbursement? |**

No, if upon separation you elect to reside in a different geographical area which is less than 50 miles from your official station, you will not receive reimbursement.

**§302-3.313 May I have my household goods transported from more than one location?**

Yes, you may have your household goods transported from more than one location. However, you will only receive reimbursement based on the cost of shipment from your official station, in one lot by the most economical route to the location where you elect to return. You will have to pay for any cost above what is authorized.

**§302-3.314 Is there a time limit when I must begin my travel and transportation upon separation?**

Yes, all travel and transportation of household goods must begin no later than six months after:

Your date of separation; or

The date of death of the employee who died before separation.

**§302-3.315 May I be granted an extension on beginning my separation travel?**

Your agency may grant you or your family member (in case of your death) an extension on beginning your separation travel, not to exceed 2 years from your effective date of separation or death if you died before separating.

**Subpart E—Employee’s Temporary Change of Station****§302-3.400 What is a “temporary change of station (TCS)?”?**

A TCS means the relocation to a new official station for a temporary period while performing a long-term assignment, and subsequent return to the previous official station upon completion of that assignment.

**§302-3.401 What is the purpose of a TCS?**

A TCS provides agencies an alternative to a long-term temporary duty travel assignment which will increase your

satisfaction and enhance morale, reduce your income tax liability, and save the Government money.

**§302-3.402 When am I eligible for a TCS?**

You are eligible for a TCS when you are directed to perform a TCS at a long-term duty location, and you otherwise would be eligible for payment of temporary duty travel allowances authorized under [Chapter 301](#) of this title. For exceptions, see [§302-3.403](#).

**§302-3.403 Who is not eligible for a TCS?**

The following individuals are not eligible for a TCS:

- (a) A new appointee;
- (b) An employee assigned to or from a State or local Government under the Intergovernmental Personnel Act (5 U.S.C. 3372 *et seq.*);
- (c) An individual employed intermittently in the Government service as a consultant or expert and paid on a daily when-actually-employed (WAE) basis;
- (d) An individual serving without pay or at \$1 a year; or
- (e) An employee assigned under the Government Employees Training Act (5 U.S.C. 4109).

**§302-3.404 Under what circumstances will my agency authorize a TCS?**

Your agency will authorize a TCS when:

- (a) It is necessary to accomplish the mission of the agency effectively and economically, and
- (b) You are directed to perform a long-term assignment at another official station; or
- (c) Your agency otherwise could authorize temporary duty travel and pay travel allowances, including payment of subsistence expenses, under [Chapter 301](#) of this title for the long-term assignment; or
- (d) Your agency determines it would be more advantageous, cost and other factors considered, to authorize a long-term assignment; and
- (e) You meet any additional conditions your agency has established.

**§302-3.405 If my agency authorizes a TCS, do I have the option of electing payment of per diem expenses under [Part 301-11](#) of this title?**

No, you do not have the option of electing payment of per diem expenses under [Part 301-11](#) of this title if your agency authorized a TCS.

**§302-3.406 How long must my assignment be for me to qualify for a TCS?**

To qualify for a TCS, your assignment must be not less than 6 months, nor more than 30 months.

**§302-3.407 What is the effect on my TCS reimbursement if my assignment lasts less than 6 months?**

Your agency may authorize a TCS only when a TCS is expected to last 6 months or more. If your assignment is cut short for reasons other than separation from Government service, you will be paid TCS expenses.

**§302-3.408 What is the effect on my TCS reimbursement if my assignment lasts more than 30 months?**

If your assignment exceeds 30 months, your agency:

- (a) Must permanently assign you to your temporary official station or return you to your previous official station;
- (b) May not pay for extended storage or property management services incurred after the last day of the thirtieth month; and
- (c) Must pay the expenses of returning you and your immediate family and household goods to your previous official station unless you are permanently assigned to your temporary official station.

**§302-3.409 Is there any required minimum distance between an official station and a TCS location that must be met for me to qualify for a TCS?**

No, there is no required minimum distance between an official station and a TCS location that must be met for you to qualify for a TCS. However, your agency may establish the area within which it will not authorize a TCS.

**§302-3.410 Must I sign a service agreement to qualify for a TCS?**

No, you do not need to sign a service agreement to qualify for a TCS.

**§302-3.411 What is my official station during my TCS?**

Your official station during your TCS is the location of your TCS.

**Expenses Paid Upon Assignment**

**§302-3.412 What expenses must my agency pay?**

Your agency must pay:

- (a) Travel, including per diem, for you and your immediate family under [Part 302-4](#) of this chapter;
- (b) Transportation and temporary storage of your household goods under [Part 302-7](#) of this chapter;
- (c) Extended storage when it is necessary as approved by your agency under [Part 302-8](#) of this chapter;
- (d) Transportation of a mobile home instead of transportation of household goods under [Part 302-10](#) of this chapter;
- (e) A miscellaneous expenses allowance under [Part 302-16](#) of this chapter;
- (f) Transportation of a privately owned vehicle(s) under [Part 302-9](#) of this chapter; and

(g) A relocation income tax allowance under [Part 302-17](#) of this chapter for additional income taxes you incur on payments your agency makes under the authority of this section for your relocation expenses.

#### **§302-3.413 Are there other expenses that my agency may pay?**

Yes, your agency may pay:

- (a) Househunting trip expenses under [Part 302-5](#) of this chapter;
- (b) Temporary quarters subsistence expenses under [Part 302-6](#) of this chapter; and
- (c) Reimbursement for property management services under [Part 302-15](#) of this chapter.

#### **Expenses Paid During Assignment**

#### **§302-3.414 If my agency authorizes a TCS, will it pay for extended storage of my household goods?**

Yes, if your agency authorizes a TCS, it will pay for extended storage when it is necessary. Extended storage expenses include:

- (a) Packing/unpacking;
- (b) Crating/uncrating;
- (c) Transporting to and from place of storage;
- (d) Charges while in storage; and
- (e) Other necessary charges directly related to storage.

#### **§302-3.415 How long may my agency pay for extended storage of household goods?**

Your agency may pay for extended storage of household goods for the duration of your TCS.

#### **§302-3.416 Is there any limitation on the combined weight of household goods I may transport and store at Government expense?**

Yes, the maximum combined weight is 18,000 pounds net weight. If you transport and/or store household goods in excess of the maximum weight allowance, you will be responsible for any excess cost.

#### **§302-3.417 Will I have to pay any income tax if my agency pays for extended storage of my household goods?**

You will be subject to income taxes on the amount of extended storage expenses your agency pays. However, your agency will pay you a relocation income tax allowance under [Part 302-17](#) of this chapter for substantially all of the additional Federal, State and local income taxes you incur on the expenses your agency pays.

#### **§302-3.418 Will my agency pay for property management services when I am authorized a TCS?**

Yes, your agency will reimburse you directly for expenses you incur or make payments on your behalf to a relocation services company, if you so choose. The term "property management services" refers to a program provided by a private company for a fee, which assists you in managing your residence at your previous official station as a rental property. Services provided by the company may include, but are not limited to, obtaining a tenant, negotiating a lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting rent, paying the mortgage and other carrying expenses from rental proceeds and/or fund of the employee, and accounting for the transactions and providing periodic reports to the employee.

#### **§302-3.419 For what property will my agency pay property management services?**

Your agency will only pay for the property from which you commuted to/from work on a daily basis at your previous official station.

#### **§302-3.420 How long will my agency pay for property management services?**

Your agency will pay for property management services for the duration of your TCS.

#### **§302-3.421 What are the income tax consequences when my agency pays for property management services?**

When your agency pays for property management services:

- (a) You will be taxed on the amount of property management expenses your agency pays, whether it reimburses you directly for your expenses or pays a relocation services company to manage your residence; and
- (b) Your agency will pay you a relocation income tax allowance under [Part 302-17](#) of this chapter for substantially all of the additional Federal, State and local income taxes you incur on the expenses your agency pays.

**Note to §302-3.421:** You may wish to consult with a tax advisor to determine whether you will incur any additional tax liability, unrelated to your agency's payment of your property management expenses, as a result of maintaining your residence as a rental property.

#### **Expenses Paid Upon Completion of Assignment or Upon Separation From Government Service**

#### **§302-3.422 What expenses will my agency pay when I complete my TCS?**

Your agency will pay for the following expenses in connection with your return to your previous official station:

- (a) Travel, including per diem, for you and your immediate family under [Part 302-4](#) of this chapter;
- (b) Transportation and temporary storage of your household good under [Part 302-7](#) of this chapter;
- (c) Transportation of a mobile home instead of transportation of our household goods under [Part 302-10](#) of this chapter;
- (d) Temporary quarters subsistence expenses under [Part 302-6](#) of this chapter;
- (e) A miscellaneous expenses allowance under [Part 302-16](#) of this chapter;
- (f) Transportation of a privately owned vehicle(s) under [Part 302-9](#)  
of this chapter; and
- (g) A relocation income tax allowance under [Part 302-17](#) of this chapter for additional income taxes you incur on payments your agency makes under the authority of this part for your relocation expenses.

**§302-3.423 If I separate from Government service upon completion of my TCS, what relocation expenses will my agency pay upon my separation?**

If you separate from Government service upon completion of your TCS, your agency will upon your separation, pay the same relocation expenses it would have paid had you not separated from Government service upon completion of your TCS.

**§302-3.424 If I separate from Government service prior to completion of my TCS, what relocation expenses will my agency pay upon my separation?**

If you separate from Government service prior to completion of your TCS for reasons beyond your control that are acceptable to your agency, your agency will pay the same relocation expenses it would pay under [§302-3.423](#). If this is not the case, the expenses your agency pays may not exceed the reimbursement that you would have received under this chapter or [Chapter 301](#) of this title whichever your agency determines to be in the best interest of the Government.

**§302-3.425 If I have been authorized successive temporary changes of station and reassigned from one temporary official station to another, what expenses will my agency pay upon completion of my last assignment or my separation from Government service?**

Your agency will pay the expenses authorized in [§302-3.422](#) for your relocation from your current temporary official station to your last permanent official station.

**Permanent Assignment to Temporary Official Station**

**§302-3.426 How is payment of my TCS expenses affected if I am permanently assigned to my temporary official station?**

Payment of TCS expenses stops once your temporary official station becomes your permanent official station. Your agency may not pay any TCS expenses incurred beginning the day your temporary official station becomes your permanent official station.

**§302-3.427 What relocation allowances may my agency pay when I am permanently assigned to my temporary official station?**

When you are permanently assigned to your temporary official station, your agency may pay:

- (a) Travel, including per diem, in accordance with [Part 302-4](#) of this chapter, for one round trip between your temporary official station and your previous official station, for you and members of your immediate family who relocated to the temporary official station with you. Your agency may also pay the same expenses for a one-way trip from the previous official station to the new permanent official station for any immediate family members who did not accompany you to the temporary official station;

- (b) Residence transaction expenses under [Part 302-11](#) of this chapter;

- (c) Property management expenses under [Part 302-15](#) of this chapter;

- (d) Relocation services under [Part 302-12](#) of this chapter;

- (e) Temporary quarters subsistence expenses in accordance with [Part 302-6](#) of this chapter;

- (f) Transportation of household goods not previously transported to the temporary official station under [Part 302-7](#) of this chapter; and

- (g) Transportation of a privately owned vehicle(s) not previously transported to the temporary official station under [§302-9.6](#) of this chapter.

**§302-3.428 If I am permanently assigned to my temporary official station, is there any limitation on the weight of household goods I may transport at Government expense to my official station?**

Yes. If you are permanently assigned to your temporary official station, you are limited to 18,000 pounds net weight for household goods you may transport at Government expense to your official station. This maximum weight will be reduced by the weight of any household goods transported at Government expense to your temporary official station under your TCS authorization. Subject to the 18,000 pound limit, your agency will pay to transport any household goods in extended storage to your official station. Additionally, if you change your residence as a result of your permanent assign-

ment to your temporary official station, your agency may pay for transporting your household goods, subject to the 18,000-pound limit, between the residence you occupied during your temporary assignment and your new residence.

**§302-3.429 Are there any relocation allowances my agency may not pay if I am permanently assigned to my temporary official station?**

If you are permanently assigned to your temporary official station, your agency may not pay:

- (a) Expenses of a househunting trip for you and your spouse to your temporary official station under [Part 302-5](#) of this chapter; or
- (b) Residence transaction expenses for selling a residence or breaking a lease at the temporary official station under [Part 302-11](#) of this chapter.

**Subpart F—Agency Responsibilities**

**Note to Subpart F:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-3.500 What governing policies and procedures must we establish for paying a relocation allowance under this [Part 302-3](#)?**

You must establish how you will implement policies that are required for this part, which include;

- (a) When you will pay relocation expenses if an employee violates his/her service agreement;
- (b) When you will authorize separate relocation allowances to an employee and an employee’s immediate family member that are both transferring to the same official station;
- (c) When you will grant an employee and/or the employee’s immediate family member(s) an extension on beginning separation travel;
- (d) When you will allow an employee to arrange his/her own relocation upon separation;
- (e) When you will authorize a temporary change of station (TCS);
- (f) When you will define an area not to reimburse for a TCS;
- (g) When you will pay extended storage of household goods for TCS; and
- (h) What relocation allowances you will and will not pay when an employee is permanently assigned to a temporary official station.

**§302-3.501 Must we establish any specific procedures for paying a relocation allowance to new appointees?**

Yes, you must establish specific guidelines for paying a relocation allowance to new appointees. These guidelines must establish the:

(a) Criteria in accordance with 5 CFR part 572 on how you will determine if a new appointee is eligible for the relocation allowances authorized therein; and

(b) Procedures which will provide new appointees with information surrounding his/her benefits.

**§302-3.502 What factors should we consider in determining whether to authorize a TCS for a long-term assignment?**

You should consider the following factors in determining whether to authorize a TCS:

(a) *Cost considerations.* You should consider the cost of each alternative. A long-term temporary duty travel assignment requires the payment of either per diem or actual subsistence expenses for the entire period of the assignment. This could be very costly to the agency over an extended period. A TCS will require fairly substantial relocation allowance payments at the beginning and end of the assignment, and less substantial payments for extended storage and property management services, when authorized, during the period of the assignment. Agencies should estimate the total cost of each alternative and authorize the one that is most advantageous for the agency, cost and other factors considered;

(b) *Tax considerations.* An employee who performs a temporary duty travel assignment exceeding one year at a single location is subject to income taxation of his/her travel expense reimbursements. The Income Tax Reimbursement Allowance (ITRA) allows for the reimbursement of Federal, State and local income taxes incurred as a result of an extended temporary duty assignment (see [§§301-11.501](#) through [301-11.640](#) of this title). An employee who is authorized and performs a TCS also will be subject to income taxation of some, but not all, of his/her TCS expenses. You will pay an offsetting Relocation Income Tax (RIT) allowance on an employee’s TCS expense reimbursements; and

(c) *Employee concerns.* The long-term assignment of an employee away from his/her official station and immediate family may negatively affect the employee’s morale and job performance. Such negative effects may be alleviated by authorizing a TCS so the employee can transport his/her immediate family and/or household goods at Government expense to the location where he/she will perform the long-term assignment. You should consider the effects of a long-term temporary duty travel assignment on an employee when deciding whether to authorize a TCS.

**Service Agreements**

**§302-3.503 Must we require employees to sign a service agreement?**

Yes, you must require employees to sign a service agreement if the employee is receiving reimbursement for reloca-

tion travel expenses, except as provided in [§302-3.410](#) for a temporary change of station.

**§302-3.504 What information should we include in a service agreement?**

The service agreement should include, but not be limited to the following:

- (a) The employee's name;
- (b) The employee's effective date of transfer or appointment;
- (c) The employee's actual place of residence at the time of appointment;
- (d) The name of all dependents that are authorized to travel under the TA;
- (e) Detailed information regarding the employee's obligation to repay funds spent on his/her relocation as a debt due the Government if the service agreement is violated;
- (f) The employee's agreed period of time (see [§302-3.505](#)) to remain in service; and
- (g) The employee's signature accepting the terms of the agreement.

**§302-3.505 How long must we require an employee to agree to the terms of a service agreement?**

You must require an employee to agree to the terms of a service agreement:

- (a) Within the continental United States for a period of service of not less than 12 months following the effective date of your transfer;
- (b) Outside the continental United States for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of transfer;
- (c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code; and
- (d) Renewal agreement travel for a period of not less than 12 months from the date of return to the same or different overseas duty station.

**§302-3.506 May we pay relocation expenses if the employee violates his/her service agreement?**

If an employee does not fulfill the terms of the service agreement, the employee is indebted to the Government for all relocation expenses that have been reimbursed to the employee or that have been paid directly by the Government. However, if the reasons for not fulfilling the terms of the service agreement are beyond the employee's control and acceptable to the agency, you may release the employee from the service agreement and waive any indebtedness.

**New Appointees**

**§302-3.507 Once we authorize relocation expenses for new appointees or student trainees what expenses must we pay?**

Once you authorize relocation expenses for new appointees or student trainees, you must pay expenses in accordance with [§302-3.2](#).

**§302-3.508 What relocation expenses are not authorized for new appointees or student trainees?**

You must not pay any expenses to new appointees or student trainees for a relocation that are not listed under [§302-3.2](#).

**Overseas Assignment and Return**

**§302-3.509 What policies must we follow when appointing an employee to an overseas assignment?**

When appointing an employee to an overseas assignment, you must:

- (a) Establish the employee's actual place of residence at the time of appointment and state it in his/her service agreement;
- (b) Use guidance in 8 U.S.C. 1101(33) which states that "The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent", for establishing places of residence; and
- (c) Require the employee to sign the service agreement prior to his/her relocation.

**§302-3.510 When must we pay return travel for immediate family members?**

You must pay transportation expenses for one-way return travel of immediate family members when the employee has successfully completed his/her service agreement period OCONUS.

**§302-3.511 What must we consider when determining return travel for immediate family member(s) for compassionate reasons prior to completion of the service agreement?**

You must determine that the public interest requires the return of the immediate family for compelling personal reasons of a humanitarian or compassionate nature, which may involve:

- (a) His/her physical or mental health;
- (b) The death of a member of the immediate family;
- (c) Obligations imposed by authority or circumstances over which the individual has no control;
- (d) The divorce or annulment of the employee's marriage; or

(e) A dependent that traveled to post of duty on the employee's authorized TA and has now reached his/her 21<sup>st</sup> birthdate.

**§302-3.512 How many times are we required to pay for an employee's return travel?**

You must pay for return travel and transportation of an employee only once at the end of each agreed period of service.

**Overseas Tour Renewal Travel****§302-3.513 May we allow a travel advance for tour renewal agreement travel?**

No, you cannot allow a travel advance for tour renewal agreement travel.

**§302-3.514 Under what conditions must we pay for tour renewal agreement travel?**

You must pay tour renewal agreement travel when:

- (a) The employee has completed the agreed upon period of service outside CONUS;
- (b) The employee has agreed to serve another OCONUS tour of duty at the same or different duty station; and
- (c) You have determined that the employee meets the special rules under [§302-3.515](#) for Alaska or Hawaii.

**§302-3.515 What special rules must we apply for reimbursement of tour renewal travel for employees stationed, assigned, appointed or transferred to/from Alaska or Hawaii?**

The following rules apply:

(a) If on September 8, 1982 the employee was serving or committed to serve a tour of duty in Alaska or Hawaii then the employee shall continue to receive reimbursement for tour renewal agreement travel;

(b) After September 8, 1982 you must determine that tour renewal agreement travel expenses are necessary for the purposes of recruiting and retaining employees and you must inform employees in writing that tour renewal agreement travel for the purposes of recruiting and retention is limited to two round trips beginning within 5 years after the date the employee first begins any period of consecutive tours of duty.

**SES Separation for Retirement****§302-3.516 What must we do before issuing payment for SES separation-relocation travel?**

Before issuing payment for separation-relocation travel, you must establish timeframes for employees to submit request for authorization and approval of relocation expenses.

**§302-3.517 May we issue travel advances for separation relocation?**

No, travel advances for separation relocation may not be authorized.

**SUBCHAPTER C—PERMANENT CHANGE OF STATION (PCS)  
ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION EXPENSES**

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**PART 302-4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905 (a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

**Subpart A—Eligibility**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

**§302-4.1 What is a permanent change of station (PCS)?**

A permanent change of station (PCS) is an assignment of a new appointee to an official station or the transfer of an employee from one official station to another on a permanent basis.

**§302-4.2 Am I eligible for subsistence and transportation allowances for PCS travel under this part?**

Yes, you are eligible for subsistence and transportation allowances for PCS travel if your agency specifically authorizes relocation expenses under this part and are:

- (a) Transferred employees (within or outside CONUS);
- (b) New appointees (within or outside CONUS); and
- (c) An employees assigned to posts of duty outside CONUS in connection with either overseas tour renewal agreement travel or return travel to places of residence for separation.

**Note to §302-4.2:** Also see tables at §§302-3.2 and 302-3.101.

**Subpart B—Travel Expenses****§302-4.100 What PCS travel expenses will my immediate family members receive?**

Except as specifically provided in §302-4.202, the rules (for TDY travel) in Chapter 301 of this title will be used for payment of the travel expenses of your immediate family members.

**§302-4.101 Must my immediate family member(s) and I begin PCS travel at the old official station and end at the new official station?**

No, if an alternate location is used, reimbursement is limited to the allowable cost by the usually traveled route between your old and new official stations.

**Subpart C—Per Diem****§302-4.200 What per diem rate will I receive for en route relocation travel within CONUS?**

Your per diem for en route relocation travel between your old and new official stations will be at the standard CONUS rate (see applicable FTR Per Diem Bulletins available on the Internet at <http://www.gsa.gov/perdiem>). You will be reimbursed in accordance with §§301-11.100 through 301-11.102 of this title.

**§302-4.201 How are my authorized en route travel days and per diem determined for relocation travel?**

Your authorized en route travel days and per diem are determined as follows: The number of authorized travel days is the actual number of days used to complete the trip, but not to exceed an amount based on a minimum driving distance per day determined to be reasonable by your agency. The minimum driving distance shall be not less than an average of 300 miles per calendar day. An exception to the daily minimum driving distance may be made when delay is beyond control of the employee, such as when it results from acts of God or restrictions by Government officials; when the employee is physically handicapped; or for other reasons acceptable to the agency.

**§302-4.202 Are there any circumstances in which a per diem allowance for my immediate family members is not allowed?**

Yes, per diem for your immediate family members cannot be authorized if you are:

- (a) A new appointee;
- (b) Assigned to posts of duty outside CONUS returning to place of actual residence for separation; or
- (c) Being relocated under the Government Employees Training Act (5 U.S.C. 4109).

**Transferred Employees Only****§302-4.203 How much per diem will my spouse or domestic partner receive if he/she accompanies me while I am performing PCS travel?**

The maximum amount your spouse or domestic partner may receive if he/she accompanies you while you are performing PCS travel is three-fourths of your daily per diem rate.

**§302-4.204**

**FEDERAL TRAVEL REGULATION**

**§302-4.204 If my spouse or domestic partner does not accompany me but travels unaccompanied at a different time, what per diem rate will he/she receive?**

If your spouse or domestic partner does not accompany you but travels unaccompanied at a different time, he/she will receive the same per diem rate to which you are entitled.

**§302-4.205 If my spouse or domestic partner and I travel on the same days along the same general route by using more than one POV, is my spouse or domestic partner considered unaccompanied?**

No; for per diem purposes, you and your spouse or domestic partner are considered to be traveling together if you travel on the same days along the same general route by using more than one POV.

**§302-4.206 How much per diem will my immediate family receive?**

Immediate family members age 12 or older receive three-fourths of your per diem rate, and children under 12 receive one-half of your per diem rate.

**Subpart D—Mileage Rates for Use of POV**

**§302-4.300 What is the POV mileage rate for PCS travel?**

For approved/authorized PCS travel by POV, the mileage reimbursement rate is the same as the moving expense mileage rate established by the Internal Revenue Service (IRS) for moving expense deductions. See IRS guidance available on the Internet at [www.irs.gov](http://www.irs.gov). GSA publishes the rate for mileage reimbursement in an FTR Bulletin on an intermittent basis. You may find the FTR Bulletins at [www.gsa.gov/relo](http://www.gsa.gov/relo).

**§302-4.301 Do the rates in §302-4.300 apply if I am performing overseas tour renewal agreement travel?**

No, POV mileage must not be authorized for overseas tour renewal agreement travel.

**§302-4.302 Are there circumstances that would allow me to receive a higher mileage rate OCONUS?**

Yes, your agency may authorize a higher mileage rate at a rate not to exceed the maximum rate prescribed in §301-11.303 of this title when:

- (a) You are expected to use the POV on official business at the new official station;
- (b) The common carrier rates for the facilities provided between the old and new official stations, the related constructive taxicab fares to and from terminals, and the per diem allowances prescribed under this part justify a higher mileage

rate as advantageous to the Government as determined by your agency; or

(c) The costs of driving the POV to, from, or between official stations located outside CONUS justify a higher mileage rate as advantageous to the Government.

**§302-4.303 For relocation within the continental United States (CONUS), may I use the actual expense method of reimbursement instead of the POV mileage rate specified in §302-4.300?**

No, for a PCS relocation within CONUS involving POV usage, your agency will reimburse you at the standard mileage rate specified in §302-4.300.

**§302-4.304 For relocation outside the continental United States (OCONUS), may my agency allow actual expense reimbursement instead of the POV mileage rate for PCS travel?**

Yes, for an OCONUS relocation involving POV usage, your agency may allow reimbursement of certain actual expenses of using the POV (*i.e.*, fuel plus the additional expenses listed in §301-10.304).

**Subpart E—Daily Driving Distance Requirements**

**§302-4.400 Will I be required to drive a minimum distance per day?**

Yes, your agency may establish a reasonable minimum driving distance that may be more than, but not less than an average of 300 miles per calendar day.

**§302-4.401 Are there exceptions to this daily minimum?**

Yes, your agency may authorize exceptions to the daily minimum driving distance when there is a delay beyond your control such as acts of God, restrictions by Governmental authorities, or other acceptable reasons; *e.g.*, a physical handicap or special needs. Your agency must have a designated approving official authorize the exception.

**§302-4.402 Will I be required to document the circumstances causing the delay?**

Yes, you must provide a statement on your travel claim explaining the circumstances that caused the delay.

**§302-4.403 Does this exception require authorization by my approving official?**

Yes, authorization by your approving official is required for any exception to the daily minimum driving distance.

## **Subpart F—Use of More Than One POV**

### **§302-4.500 If I am authorized to use more than one POV, what are the allowances?**

When you are authorized to use more than one POV, the allowances under [§§302-4.300](#) and [302-4.302](#) apply for each POV.

### **§302-4.501 If I use an additional POV that was not authorized for PCS travel, will I be reimbursed for the additional POV?**

No, your agency must authorize you reimbursement of the use of more than one POV before you are entitled to reimbursement.

## **Subpart G—Advance of Funds**

### **§302-4.600 May I request an advance of funds for per diem and mileage allowances for PCS travel?**

You may request advance of funds for per diem and mileage allowances for PCS travel, except for overseas tour renewal agreement travel.

## **Subpart H—Agency Responsibilities**

**Note to Subpart H:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency, unless otherwise noted.

### **§302-4.700 What governing policies must we establish for payment of allowances for subsistence and transportation expenses?**

For payment of allowances for subsistence and transportation expenses, you must establish policy and procedures governing:

- (a) How you will implement the regulations throughout this part;
- (b) A reasonable minimum driving distance per day that may be more than, but not less than a average of 300 miles per calendar day when use of a POV is used for PCS travel and when you will authorize an exception;

(c) Designation of an agency approving official who will authorize an exception to the daily minimum driving distance; and

(d) When you will authorize the use of more than one POV for PCS travel.

### **§302-4.701 What PCS travel expenses must we pay?**

Except as specifically provided in this chapter, PCS travel expenses you must pay are:

- (a) Per diem;
- (b) Transportation costs; and
- (c) Other travel expenses in accordance with 5 U.S.C. 5701-5709 and [Chapter 301](#) of this title.

### **§302-4.702 What PCS travel expenses must we pay for the employee’s immediate family members?**

Except as specifically provided in this chapter, the reimbursement limits in [Chapter 301](#) of this title govern payment of travel expenses you must pay for the employee’s immediate family members.

### **§302-4.703 How do we compute the per diem for an established minimum driving distance per day?**

Per diem for an established minimum driving distance per day is computed based on the lodgings-plus per diem system as described in [§§301-11.100](#) through [301-11.102](#) of this title.

### **§302-4.704 Must we require a minimum driving distance per day?**

Yes, you must establish a minimum driving distance not less than an average of 300 miles per day. However, an exception to the daily minimum driving distance may be made when the delay is:

- (a) Beyond control of the employee, e.g., results from acts of God or restrictions by Government officials;
- (b) Due to a physical handicap; or
- (c) For other reasons acceptable to you.

### **§302-4.705 What are the allowances if the employee uses more POVs than authorized?**

If the employee uses more POVs than authorized, reimbursement will be made as if all persons traveled in the number of POVs that you authorized.

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## PART 302-5—ALLOWANCE FOR HOUSEHUNTING TRIP EXPENSES

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13474, 3 CFR, 1971–1973 Comp., p. 586.

### Subpart A—Employee’s Allowance for Househunting Trip Expenses

**Note to Subpart A:** Use of pronouns “I”, “you” throughout this subpart refers to the employee.

#### §302-5.1 What is a “househunting trip”?

The term “househunting trip” refers to a trip made by the employee and/or spouse to your new official station locality to find permanent living quarters to rent or purchase. The term “living quarters” in this part includes apartments, condominiums, and cooperatives in addition to townhouses and single family homes.

#### §302-5.2 What is the purpose of the househunting trip expenses allowance?

The allowance for househunting trip expenses is intended to facilitate and expedite the employee’s move from your old official station to your new official station and to lower the Government’s overall cost for the employee’s relocation by reducing the amount of time an employee must occupy temporary quarters. The allowance for househunting trip expenses provides the employee and/or spouse a period of time to concentrate on finding a suitable permanent residence at the new official station and thereby expedites the employee’s relocation.

#### §302-5.3 Am I eligible for a househunting trip expenses allowance?

You are eligible for a househunting trip expenses allowance if you are an employee who is authorized to transfer, and in addition:

- (a) Both your old and new official stations are located within the United States;
- (b) You are not assigned to Government or other prearranged housing at your new official station; and
- (c) Your old and new official stations are 75 or more miles apart (as measured by map distance) via a usually traveled surface route.

#### §302-5.4 Who is not eligible for a househunting trip expenses allowance?

New appointees and employees assigned under the Government Employees Training Act (5 U.S.C. 4109) are not eligible for a househunting trip expenses allowance.

#### §302-5.5 Must my agency authorize payment of a househunting trip expenses allowance?

No, your agency determines when it is in the Government’s interest to authorize you a househunting trip and the procedures you must follow if it is authorized.

#### §302-5.6 Under what circumstances will I receive a househunting trip expenses allowance?

You will receive a househunting trip expenses allowance if:

- (a) Your agency authorized you to perform a househunting trip in advance of the travel (the agency authorization must specify the mode of transportation and the period of time allowed for the trip);
- (b) You have signed a service agreement;
- (c) Your agency has established, and informed you of, the date you are to report to your new official station; and
- (d) You meet any additional conditions your agency has established.

#### §302-5.7 Who may travel on a househunting trip at Government expense?

Only you and/or your spouse may travel on a househunting trip at Government expense.

#### §302-5.8 How many househunting trips may my agency authorize in connection with a particular transfer?

Your agency may authorize only one round trip for you and/or your spouse in connection with a particular transfer.

#### §302-5.9 May my spouse and I perform separate househunting trips at Government expense?

Yes, however, your reimbursement will be limited to the cost that would have been incurred if you and your spouse had traveled together on one round trip.

#### §302-5.10 How soon may I and/or my spouse begin a househunting trip?

You may begin your househunting trip as soon as your agency has notified you of your transfer and issued a travel authorization for a househunting trip. To take maximum advantage of your trip, however, it is very important that you become familiar as quickly as you can with your new official station area (e.g., housing market conditions, school locations, etc.). If you are selling your residence at your old official station, you should not begin your househunting trip until you have a current appraisal of the value of the residence so that you can more accurately determine the appropriate price range of residences to consider during your househunting trip.

### §302-5.11 Is there a time limit on the duration of a househunting trip?

A househunting trip should be for a reasonable period, not to exceed 10 calendar days, as authorized by your agency under [§302-5.101\(d\)](#).

### §302-5.12 When must my househunting trip be completed?

You and/or your spouse must complete your househunting trip as indicated in the following table:

For	Your househunting trip must be completed by
You.	The day before you report to your new official station.
Your spouse.	The earlier of: <ul style="list-style-type: none"> <li>(a) The day before your family relocates to your new official station; or</li> <li>(b) The day before the maximum time for beginning allowable travel expires (see <a href="#">§302-2.100</a> of this chapter).</li> </ul>

### §302-5.13 What methods may my agency use to reimburse me for househunting trip expenses?

Your agency will reimburse your househunting trip expenses as indicated in the following table:

For	You are reimbursed
You and/or your spouse's transportation expenses.	Your actual transportation costs.
You and/or your spouse's subsistence expenses.	One of the following: <ul style="list-style-type: none"> <li>(a) A per diem allowance for you and/or your spouse as prescribed under <a href="#">§§301-11.100</a> through <a href="#">301-11.102</a> of this <a href="#">Chapter 301</a>; or</li> <li>(b) If you accept your agency's offer of the fixed amount option, and:               <ul style="list-style-type: none"> <li>(1) Both you and your spouse perform a househunting trip either together or separately, a single amount determined by multiplying the applicable locality rate (listed in <a href="#">Appendix A</a> to <a href="#">Chapter 301</a> of this subtitle) by 6.25 or</li> <li>(2) Only one of you performs a househunting trip, an amount determined by multiplying the applicable locality rate (listed in <a href="#">Appendix A</a> to <a href="#">Chapter 301</a> of this subtitle) by 5.</li> </ul> </li> </ul>

### §302-5.14 What transportation expenses will my agency pay?

Your agency will authorize you to travel by the transportation mode(s) (e.g., airline, train, or privately owned automobile) it determines to be advantageous to the Government. Your agency will pay for your transportation expenses by the authorized mode(s). If you travel by any other mode(s), your agency will pay your transportation expenses not to exceed the cost of transportation by the authorized mode(s).

### §302-5.15 Must I document my househunting trip expenses to receive reimbursement?

To receive reimbursement for househunting trip transportation expenses you must itemize your transportation expenses and provide receipts as required by [§§301-11.25](#), [301-11.306](#) and [301-52.4\(b\)](#) of [Chapter 301](#). For fixed amount househunting trip subsistence reimbursement, you do not need to document your subsistence expenses. For per diem househunting trip subsistence expense reimbursement, you must itemize your lodging expenses and you must provide receipts as required by [§§301-11.25](#), [301-11.306](#) and [301-52.4\(b\)](#) of [Chapter 301](#).

### §302-5.16 May I receive an advance of funds for househunting trip expenses?

Your agency may authorize an advance of funds, in accordance with [§302-2.20](#) of this chapter, for your househunting trip expenses. Your agency may not advance you funds in excess of the sum of your anticipated transportation costs and either the maximum per diem allowable under [Part 302-4](#) of this chapter for the location and duration of your househunting trip or your fixed amount househunting trip subsistence expenses payment, whichever applies.

### §302-5.17 Am I in a duty status when I perform a househunting trip?

Yes, you are in a duty status when you perform a househunting trip.

### §302-5.18 May I retain any balance left over from my househunting reimbursement if my fixed amount is more than adequate to cover my househunting trip?

Yes, if your fixed househunting amount is more than adequate to cover your househunting expenses any balance belongs to you.

## Subpart B—Agency Responsibilities

**Note to Subpart B:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

### §302-5.100 How should we administer the househunting trip expenses allowance?

You should administer the househunting trip expenses allowance to minimize or avoid its use when other satisfactory and more economical arrangements are available.

### §302-5.101 What governing policies must we establish for the househunting trip expenses allowance?

You must establish policies and procedures governing:

- (a) When you will authorize a househunting trip for an employee;

- (b) Who will determine if a househunting trip is appropriate in each situation;
- (c) If and when you will authorize the fixed amount option for househunting trip subsistence expenses reimbursement;
- (d) Who will determine the appropriate duration of a househunting trip for an employee who selects a per diem allowance under [Part 302-4](#) of this chapter to reimburse househunting trip subsistence expenses; and
- (e) Who will determine the mode(s) of transportation to be used.

**§302-5.102 Under what circumstances may we authorize a househunting trip?**

You may authorize a househunting trip on an individual-case basis when the employee has accepted the transfer and his/her circumstances indicate that a househunting trip actually is needed. You may not authorize a househunting trip when the purpose of the trip is to assist the employee in deciding whether he or she will accept the transfer.

**§302-5.103 What factors must we consider in determining whether to offer an employee the fixed amount househunting trip subsistence expense reimbursement option?**

You must consider the following factors:

- (a) *Ease of administration.* Payment of a per diem allowance under [Part 302-4](#) of this chapter requires you to review claims for the validity, accuracy, and reasonableness of each expense amount, except for meals and incidental expenses. Fixed amount househunting trip subsistence expenses reimbursement is easier to administer because you do not have to review expense amounts.

- (b) *Cost considerations.* You must weigh the cost of each reimbursement option on a case-by-case basis.

- (c) *Treatment of employees.* The employee is allowed to choose between a per diem allowance under [Part 302-4](#) of this chapter and fixed amount househunting trip subsistence expenses reimbursement when you offer the fixed amount reimbursement method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

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## **PART 302-6—ALLOWANCE FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971-1973 Comp., p. 586.

### **Subpart A—General Rules**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

#### **§302-6.1 What are “temporary quarters”?**

The term “temporary quarters” refers to lodging obtained for the purpose of temporary occupancy from a private or commercial source.

#### **§302-6.2 What are “temporary quarters subsistence expenses (TQSE)”?**

“Temporary quarters subsistence expenses” or “TQSE” are subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters. TQSE does not include transportation expenses incurred during occupancy of temporary quarters (see [§302-6.18](#) for details).

#### **§302-6.3 What is the purpose of the TQSE allowance?**

The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.

#### **§302-6.4 Am I eligible for a TQSE allowance?**

You are eligible for a TQSE allowance if you are an employee who is authorized to transfer; and

(a) Your new official station is located within the United States; and

(b) Your old and new official stations are 50 miles or more apart (as measured by map distance) via a usually traveled surface route.

#### **§302-6.5 Who is not eligible for a TQSE allowance?**

New appointees, employees assigned under the Government Employees Training Act (5 U.S.C. 4109), and employees returning from an overseas assignment for the purpose of separation are not eligible for a TQSE allowance.

#### **§302-6.6 Must my agency authorize payment of a TQSE allowance?**

No, your agency determines whether it is in the Government’s interest to pay TQSE.

#### **§302-6.7 Under what circumstances will I receive a TQSE allowance?**

You will receive a TQSE allowance if:

(a) Your agency authorizes it before you occupy the temporary quarters (the agency authorization must specify the period of time allowed for you to occupy temporary quarters);

(b) You have signed a service agreement; and

(c) You meet any additional conditions your agency has established.

#### **§302-6.8 Who may occupy temporary quarters at Government expense?**

Only you and/or your immediate family may occupy temporary quarters at Government expense.

#### **§302-6.9 Where may I/we occupy temporary quarters at Government expense?**

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

#### **§302-6.10 May my immediate family and I occupy temporary quarters at different locations?**

Yes. For example, if you must vacate your home at the old official station and report to the new official station and your family remains behind until the end of the school year, you may need to occupy temporary quarters at the new official station while your family occupies temporary quarters at the old official station.

#### **§302-6.11 What methods may my agency use to reimburse me for TQSE?**

Your agency will reimburse you for TQSE under the actual expense method unless it permits the “fixed amount” reimbursement method as an alternative. If your agency makes both methods available to you, you may select the one you prefer.

#### **§302-6.12 Must I document my TQSE to receive reimbursement?**

For fixed amount TQSE reimbursement, you do not document your TQSE. For actual TQSE reimbursement, you must document your TQSE by itemizing each expense and providing receipts as required by [§§301-11.25](#), [301-11.306](#) and [301-52.4\(b\)](#) of this title.

#### **§302-6.13 How soon may I/we begin occupying temporary quarters at Government expense?**

As soon as your agency has authorized you to receive a TQSE allowance and you have signed a service agreement.

**§302-6.14****FEDERAL TRAVEL REGULATION****§302-6.14 How is my TQSE allowance affected if my temporary quarters become my permanent residence quarters?**

If your temporary quarters become your permanent residence quarters, you may receive a TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily.

**§302-6.15 May I receive an advance of funds for TQSE?**

Yes, if authorized in accordance with [§302-2.20](#) of this chapter, your agency may advance the amount of funds necessary to cover your estimated TQSE expenses for up to 30 days. Your agency subsequently may advance additional funds for periods up to 30 days.

**§302-6.16 May I receive a TQSE allowance if I am receiving another subsistence expenses allowance?**

No, with one exception. You may receive a cost-of-living allowance payable under 5 U.S.C. 5941 in addition to a TQSE allowance.

**§302-6.17 Am I eligible for a TQSE allowance if I transfer to a foreign area?**

No, you may not receive a TQSE allowance under this part when you transfer to an area outside the United States. However, you may qualify for a comparable allowance under the Standardized Regulations (Government Civilians, Foreign Areas) prescribed by the Department of State.

**§302-6.18 May I be reimbursed for transportation expenses incurred while I am occupying temporary quarters?**

Transportation expenses incurred in the vicinity of the temporary quarters are not TQSE, and therefore, there is no authority to pay such expenses under TQSE.

**Subpart B—Actual TQSE Method of Reimbursement****§302-6.100 What am I paid under the actual TQSE reimbursement method?**

Your agency will pay your actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The “maximum allowable amount” is the “maximum daily amount” multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The “maximum daily amount” is determined by adding the rates in the following table for you

and each member of your immediate family authorized to occupy temporary quarters:

The “maximum daily amount” of TQSE under the actual expense method that			
For:	You and/or your unaccompanied spouse or domestic partner* may receive is	Your accompanied spouse, domestic partner or a member of your immediate family who is age 12 or older may receive is	A member of your immediate family who is under age 12 may receive is
The first 30 days of temporary quarters.	The applicable per diem rate.	.75 times the applicable per diem rate.	.5 times the applicable per diem rate.
Any additional days of temporary quarters.	.75 times the applicable per diem rate.	.5 times the applicable per diem rate.	.4 times the applicable per diem rate.

\* That is, when the spouse or domestic partner necessarily occupies temporary quarters in lieu of the employee or in a location separate from the employee.

**§302-6.101 May my agency reduce my TQSE allowance below the “maximum allowable amount”?**

Yes, if the estimated daily amount of your TQSE is determined in advance to be lower than the maximum daily amount, your agency may reduce the maximum allowable amount to your expected expenses.

**§302-6.102 What is the “applicable per diem rate” under the actual TQSE reimbursement method?**

The “applicable per diem rate” under the actual TQSE reimbursement method is as follows:

For temporary quarters located in	The applicable per diem rate is
The continental United States (CONUS).	The standard CONUS rate.
Outside the Continental United States (OCONUS)	The locality rate established by the Secretary of Defense or the Secretary of State under <a href="#">§301-11.6</a> of this title.

**§302-6.103 What is the latest period for which actual TQSE reimbursement may begin?**

The period must begin before the maximum time for beginning allowable travel and transportation under [§302-2.8](#).

**§302-6.104 How long may I be authorized to claim actual TQSE reimbursement?**

Your agency may authorize you to claim actual TQSE in increments of 30-days or less, not to exceed 60 consecutive days. However, if your agency determines that there is a com-

pelling reason for you to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional consecutive days. Under no circumstances may you be authorized reimbursement for actual TQSE for more than a total of 120 consecutive days.

**§302-6.105 What is a “compelling reason” warranting extension of my authorized period for claiming an actual TQSE reimbursement?**

A “compelling reason” is an event that is beyond your control and is acceptable to your agency. Examples include, but are not limited to when:

- (a) Delivery of your household goods to your new residence is delayed due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.
- (b) You cannot occupy your new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence).
- (c) You are unable to locate a permanent residence which is adequate for your family’s needs because of housing conditions at your new official station.
- (d) Sudden illness, injury, your death or the death of your immediate family member; or
- (e) Similar reasons.

**§302-6.106 May I interrupt occupancy of temporary quarters?**

Yes, your authorized period for claiming actual TQSE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not you occupy temporary quarters. You may, however, interrupt your authorized period for claiming actual TQSE reimbursement in the following instances:

- (a) For the time allowed for en route travel between the old and new official stations;
- (b) For circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty; or
- (c) For a non-official necessary interruption such as hospitalization, approved sick leave, or other reason beyond your control and acceptable to your agency.

**§302-6.107 What effect do partial days of temporary quarters occupancy have on my authorized period for claiming actual TQSE reimbursement?**

Occupancy of temporary quarters for less than a whole day constitutes one full day of your authorized period. (However, see [§302-6.110](#) regarding en route travel.)

**§302-6.108 When does my authorized period for claiming actual TQSE reimbursement end?**

The period ends at midnight on the earlier of:

- (a) The day preceding the day you and/or any member of your immediate family occupies permanent residence quarters.
- (b) The day your authorized period for claiming actual TQSE reimbursement expires.

**§302-6.109 May the period for which I am authorized to claim actual TQSE reimbursement for myself be different from that of my immediate family?**

No, the eligibility period for which you are authorized to claim actual TQSE reimbursement for yourself and for each member of your immediate family must run concurrently.

**§302-6.110 What effect do partial days have on my actual TQSE reimbursement?**

You may not receive reimbursement under both the actual TQSE allowance and another subsistence expenses allowance within the same day, with one exception. If you claim TQSE reimbursement on the same day that en route travel per diem ends, your en route travel per diem will be computed under applicable partial day rules and you also may be reimbursed for actual TQSE you incur after 6:00 p.m. of that day.

**§302-6.111 May I and/or my immediate family occupy temporary quarters longer than the period for which I am authorized to claim actual TQSE reimbursement?**

Yes, but you will not be reimbursed for any of the expenses you incur during the unauthorized period.

**Subpart C—Fixed Amount Reimbursement**

**§302-6.200 What am I paid under the fixed amount reimbursement method?**

If your agency offers and you select the fixed amount TQSE reimbursement method, you are paid a fixed amount for up to 30 days. No extensions are allowed under the fixed amount method.

**§302-6.201 How do I determine the amount of my payment under the fixed amount reimbursement method?**

Multiply the number of days your agency authorizes TQSE by .75 times the maximum per diem rate (i.e., lodging plus meals and incidental expenses) prescribed in [Chapter 301](#) of this subtitle for the locality of the new official station. Then for each member of your immediate family, multiply the same number of days by .25 times the same per diem rate. Your payment will be the sum of this calculation.

**§302-6.202 Will I receive additional TQSE reimbursement if my fixed amount is not adequate to cover my TQSE?**

No, you will not receive additional TQSE reimbursement if the fixed amount is not adequate to cover your TQSE.

**§302-6.203 May I retain any balance left over from my TQSE reimbursement if my fixed amount is more than adequate?**

Yes, if your fixed TQSE amount is more than adequate to cover your TQSE expenses any balance belongs to you.

## Subpart D—Agency Responsibilities

**Note to Subpart D:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-6.300 How should we administer the TQSE allowance?**

Temporary quarters should be used only if, and only for as long as, necessary until the employee and/or his/her immediate family can move into permanent residence quarters. You must administer the TQSE allowance to minimize or avoid other relocation expenses.

**§302-6.301 What governing policies must we establish for the TQSE allowance?**

You must establish policies and procedures governing:

(a) When you will authorize temporary quarters for employees;

(b) Who will determine if temporary quarters is appropriate in each situation;

(c) If and when you will authorize the fixed amount option for TQSE reimbursement;

(d) Who will determine the appropriate period of time for which TQSE reimbursement will be authorized, including approval of extensions and interruptions of temporary quarters occupancy; and

(e) Who will determine whether quarters were indeed temporary, if there is any doubt.

**§302-6.302 Under what circumstances may we authorize the TQSE allowance?**

You may authorize a TQSE allowance on an individual-case basis when use of temporary quarters is justified in connection with an employee's transfer to a new official station. You may not authorize a TQSE allowance for vacation purposes or other reasons unrelated to the transfer.

**§302-6.303 What factors should we consider in determining whether the TQSE allowance is actually necessary?**

The factors you should consider include:

(a) The length of time the employee should reasonably be expected to occupy his/her residence at the old official station prior to reporting for duty at the new official station. An employee and his/her immediate family should continue to occupy the residence at the old official station for as long as practicable to avoid the necessity for temporary quarters.

(b) The existence of less expensive alternatives. If a less expensive alternative to the TQSE allowance exists that will enable the employee to find permanent quarters at the new official station, you should consider such an alternative. For example, authorize a househunting trip instead of temporary quarters if it would cost less overall.

(c) The existence of other opportunities to arrange for permanent quarters. Consider whether the employee had other adequate opportunity to arrange for permanent quarters. For example, you should not authorize temporary quarters if the employee had adequate opportunity during an extended temporary duty assignment to arrange for permanent quarters.

**§302-6.304 What factors should we consider in determining whether to offer an employee the fixed amount TQSE reimbursement option?**

The factors you should consider include:

(a) Ease of administration. Actual TQSE reimbursement requires an agency to review claims for the validity, accuracy, and reasonableness of each expense amount. Fixed amount TQSE reimbursement does not require review of expense amounts and is therefore easier to administer.

(b) Cost considerations. You must weigh the cost of each alternative. Actual TQSE reimbursement may extend up to 120 consecutive days, while fixed amount TQSE reimbursement is limited to 30 days. Actual TQSE reimbursement may be less expensive, since its ceiling is based on the standard CONUS rate, while fixed amount TQSE reimbursement is based on the locality per diem rate. However, fixed amount TQSE reimbursement may be less expensive because the maximum daily rate under actual TQSE reimbursement is a higher percentage of the applicable per diem rate than fixed amount TQSE reimbursement.

(c) Treatment of employee. The employee is allowed to choose between actual TQSE reimbursement and fixed amount TQSE reimbursement when you offer the fixed amount TQSE reimbursement method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

**§302-6.305 What factors should we consider in determining whether quarters are temporary?**

In determining whether quarters are “temporary”, you should consider factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to

secure a permanent dwelling, and the length of time the employee occupies the quarters.

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## **SUBCHAPTER D—TRANSPORTATION AND STORAGE OF PROPERTY**

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Chapter 302—Relocation Allowances

Part 302-7—Transportation and Temporary Storage of Household Goods and Professional Books, Papers, and Equipment (PBP&amp;E)

§302-7.8

## **PART 302-7—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT (PBP&E)**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

### **Subpart A—General Rules**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

#### **§302-7.1 Who is eligible for the transportation and temporary storage of household goods (HHG) at Government expense?**

The following are eligible for the transportation and temporary storage of household goods (HHG) at Government expense when a relocation has been determined to be in the interest of the Government:

- (a) An employee transferred between official stations, within or outside the continental United States (CONUS);
- (b) A new appointee to his/her first official station within or outside the CONUS;
- (c) An employee being returned to CONUS for separation from an outside CONUS assignment, after completion of an agreed upon period of services;
- (d) An SES employee authorized last move home benefits under [§302-3.304](#) of this chapter;
- (e) An employee authorized a temporary change of station (TCS).

#### **§302-7.2 What is the maximum weight of HHG that may be transported or stored at Government expense?**

The maximum weight allowance of HHG that may be shipped or stored at Government expense is 18,000 pounds net weight.

#### **§302-7.3 May HHG be transported or stored in more than one lot?**

Household goods may be transported and stored in multiple lots, however, your maximum HHG weight allowance is based upon shipping and storing all HHG as one lot.

#### **§302-7.4 Does the weight of any professional books, papers and equipment (PBP&E) count against the 18,000 pound HHG weight limitation?**

Yes, the weight on any PBP&E is generally part of and not in addition to the 18,000 pound HHG weight limitation. However, if the weight of any PBP&E causes the lot to exceed 18,000 pounds, the PBP&E may be transported to the new duty station as an administrative expense of the agency. Authorization for such shipment is granted solely at the dis-

cretion of the agency and subject to its policies governing such shipment.

#### **§302-7.5 May the 18,000 pound HHG weight limitation be increased if PBP&E are transported as an administrative expense to the agency?**

No, the 18,000 pound HHG weight limitation is mandated by statute and cannot be exceeded. Shipments of PBP&E as an administrative expense to the agency are not subject to the HHG maximum weight allowance.

#### **§302-7.6 What are the authorized origin and destination points for the transportation of HHG and PBP&E.**

The authorized origin and destination points for the transportation of HHG and PBP&E varies by category of employee and are as follows:

<b>Transportation of HHG and PBP&amp;E</b>	
<b>Category of Employee</b>	<b>Authorized Origin/Destination</b>
(a) Employee transferred between official stations.	Between the old and new official station.
(b) New appointee.	From place of actual residence to new official station.
(c) Employee returning from outside CONUS assignment for separation from Government service.	Last official station to place of actual residence.
(d) SES last move home benefits.	From last official station to place of selection.
(e) Temporary change of official station (TCS).	From current official station to TCS location and return.

#### **§302-7.7 May the origin and destination points be other than that prescribed in §302-7.6?**

Yes, shipments may originate or terminate at any location; however, your reimbursement is limited to the cost of transporting the property in one lot from the authorized origin to the authorized destination.

#### **§302-7.8 Is there a time limit for the temporary storage of an authorized HHG shipment?**

The initial period of temporary storage at Government expense shall not exceed 90 days in connection with any authorized HHG shipment. The HHG may be placed in temporary storage at origin, in transit, at destination, or any combination thereof. However, upon your written request, an additional 90 days may be authorized by the designated agency official. In no case may the maximum time limit for temporary storage exceed 180 days.

**§302-7.9 What are some reasons that would justify the additional storage beyond the initial 90-day limit?**

Reasons for justifying temporary storage beyond the initial 90-day limit include, but are not limited to:

- (a) An intervening temporary duty or long-term training assignment;
- (b) Non-availability of suitable housing;
- (c) Completion of residence under construction;
- (d) Serious illness of employee or illness or death of a dependent;
- (e) Strikes, acts of God, or other circumstances beyond the control of the employee; or
- (f) Similar reasons.

**§302-7.10 Is property acquired en route eligible for transportation at Government expense?**

No, property acquired en route will not be eligible for transportation at Government expense.

Method of Shipment	How weight of shipment is determined
(a) Uncrated (shipped in HHG movers van or similar conveyance)	The net weight will be shown on the bill of lading or weight certificate attached and includes the weight of barrels, boxes, cartons, and similar material used in packing, but does not include pads, chains, dollies and other equipment to load and secure the shipment.
(b) Crated shipments	When crated the net weight will not include the weight of the crating material. The net weight will be computed as being 60 percent of the gross weight. However, if the net weight computed in this manner exceeds the applicable weight limitation and if it is determined that, for reasons beyond the employee's control, unusually heavy crating and packing materials were necessarily used, the net weight may be computed at less than 60 percent of the gross weight.
(c) Containerized shipments (Special containers designed, e.g., lift vans, CONEX transporters, HHG shipping boxes, for repeated use)	When the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, the net weight will be 85 percent of the gross weight less the weight of the container. If the known tare weight includes such material, so that the net weight is the same as it would be for uncrated shipments in interstate commerce, the net weight will not be subject to reduction.
(d) Constructive weight	If adequate scales are not available at origin, en route or at destination, a constructive weight based on 7 pounds per cubic foot of properly loaded van space may be used. Such weight may be used for a part-load when its weight could not be obtained, without first unloading it or other part-loads being carried in the same vehicle or when the HHG are not weighed because the carrier's charges for local or metropolitan area moves are properly computed on the basis other than weight or volume of the shipment (as when payment is based on an hourly rate and distance involved). In such instances a statement from the carrier showing the properly loaded van space required for the shipment should be obtained with respect to proof of entitlement to a commuted rate payment when net weight cannot be shown.

**§302-7.13 What methods of transporting and paying for the movement of HHG, PBP&E and temporary storage are authorized?**

There are two authorized methods of transporting and paying for the movement of HHG, PBP&E and temporary storage. Your agency will determine which of the following methods will be authorized.

- (a) Commuted Rate System. Under the commuted rate system you assume total responsibility for arranging and paying for, at least the following services: packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, drayage, and temporary storage of your HHG and PBP&E with a

**§302-7.11 What is the Government's liability for loss or damage to HHG?**

The Government's liability for loss or damage to HHG is determined by your agency under title 31 U.S.C. 3721-3723 and agency implementing rules and regulations issued pursuant to the law.

**§302-7.12 What are the various methods of shipping HHG and how is the weight determined for each type of shipment?**

HHG should be shipped by the most economical method available. The various methods of shipment and weight calculations include the following:

commercial HHG carrier or by renting self drive equipment for a do-it-yourself move. When any PBP&E is transported as an administrative expense of your agency, all arrangements (e.g., packing/unpacking, pickup/delivery, weighing, temporary storage, etc.) will be handled and paid for by your agency.

(b) Actual Expense Method. Under the actual expense method, your agency assumes the responsibility for arranging and paying for all aspects (e.g., packing/unpacking, pickup/delivery, weighing, line-haul, drayage, temporary storage, etc.,) of transporting your HHG and PBP&E with a commercial HHG carrier.

**§302-7.14 Are there any disadvantages to using the commuted rate method for transporting HHG, PBP&E and temporary storage?**

Yes. The disadvantages to using the commuted rate method for transporting HHG, PBP&E and temporary storage are that the:

- (a) Government cannot take advantage of any special rates that may be offered only to Government shipments;
- (b) Commuted rate method does not apply to intrastate moves; and
- (c) Commuted rate method may not fully reimburse your out-of-pocket expenses.

**§302-7.15 Must I use the method selected by my agency for transporting my HHG, PBP&E and temporary storage?**

No, you do not have to use the method selected ([§302-7.301](#)) by your agency, and you may pursue other methods, however, your reimbursement is limited to the actual cost incurred, not to exceed what the Government would have incurred under the commuted rate system within CONUS and the actual expense method OCONUS.

**§302-7.16 Is the maximum weight allowance for HHG and temporary storage limited when quarters are furnished or partly furnished by the Government OCONUS or upon return to CONUS?**

When quarters are furnished or partly furnished by the Government OCONUS, your agency may limit the weight of HHG and temporary storage that can be transported to that location. Only the authorized weight allowance that was shipped to the OCONUS location may be returned to CONUS upon completion of the tour of duty, unless the agency makes an exception under conditions specified in agency internal regulations.

**§302-7.17 May PBP&E be transported at Government expense upon returning to CONUS for separation from Government service, after completion of an OCONUS assignment?**

Any PBP&E that was transported as an administrative expense of the Government to the OCONUS assignment will be returned as an administrative expense of the Government to the place of actual residence or any other location, not to exceed the cost to the authorized destination.

**§302-7.18 Who is liable for any loss or damage to HHG incident to an authorized relocation?**

When transporting HHG under the commuted rate or actual expense method and a commercial HHG carrier is used, the carrier accepts limited liability for any loss or damage in accordance with HHG carrier tariffs. For transporting

HHG by self drive equipment for a do-it-yourself-move and for any loss or damage not covered by the HHG carrier, see [Part 302-11](#) of this chapter.

**§302-7.19 Should I include items that are irreplaceable or of extremely high monetary or sentimental value in my HHG shipment?**

Generally no; items that are irreplaceable or of extremely high monetary or sentimental value should not be included in your HHG shipment. Additional insurance may be purchased, at your expense, to cover any loss or damage, however, such items are not necessarily provided special security. Accordingly, it is advisable that you or immediate family member(s) transport such items personally.

**§302-7.20 If my HHG shipment includes an item (e.g., boat, trailer, ultralight vehicle for which a weight additive is assessed by the HHG carrier, am I responsible for payment?)**

If your HHG shipment includes an item (e.g., boat or trailer of reasonable size) for which a weight additive is assessed by the HHG carrier (as prescribed in applicable tariffs), and your shipment exceeds the maximum weight prescribed in [§302-7.2](#), you are responsible for all excess charges and any special packing, crating, and handling of the weight additive items. See [§302-7.200](#) on how charges are paid and who makes the shipping arrangements.

**Subpart B—Commutted Rate****§302-7.100 How are the charges of transporting HHG, and temporary storage calculated?**

The charges for transporting HHG, and temporary storage are computed by multiplying the number of pounds shipped divided by 100 (within the 18,000 maximum limitation) by the applicable rate per one-hundred pounds for the distance transported. This includes, but is not limited to packing/unpacking, crating/uncrating, drayage, weighing, pickup/delivery, line-haul, accessorial charges, and temporary storage charges, including but not limited to handling in/out, etc. However, your reimbursement may not fully cover your total out-of-pocket expenses. In determining the distance shipped you may use the Household Goods Carriers Mileage Guide (issued by the Household Goods Carriers' Bureau, 1611 Duke Street, Alexandria, VA 22314-3482), tariffs filed with GSA travel management centers, or any other mileage guide authorized by your agency. If the exact mileage is not shown, the next higher mileage distance applies. If there is a minimum weight charge above the actual weight under applicable tariffs, reimbursement will be based on the minimum weight charge instead of the actual weight.

**§302-7.101 Where can the commuted rate schedules for the transportation of HHG, and temporary storage be found?**

The charges for the line-haul transportation, packing, crating, unpacking, drayage incident to transportation, and other accessorial charges for HHG, and temporary storage can be found in the Household Goods Carrier Bureau tariff (issued by the Household Goods Carriers' Bureau, 1611 Duke Street, Alexandria, VA 22314-3482) or by contacting the GSA travel management center or the appropriate office designated in your agency.

**§302-7.102 How is the mileage distance determined under the commuted rate method?**

To determine the distance from the authorized origin to the authorized destination, the Household Goods Carriers Standard Mileage Guide, or a standard road atlas issued by The Household Goods Carrier's Bureau, or any other mileage guide authorized by your agency.

**Note to §§302-7.100 and 302-7.102:** Any substantial deviation from the distances shown in the authorized mileage guides must be explained on the travel claim.

**§302-7.103 How are the charges calculated when a carrier charges a minimum weight, but the actual weight of HHG, PBP&E and temporary storage is less than the minimum weight charged?**

Charges for HHG, PBP&E and temporary storage are calculated based on the minimum weight charged by the carrier, but not to exceed 18,000 pounds.

**§302-7.104 What documentation must be provided for reimbursement?**

When claiming reimbursement under the commuted rate, you must provide:

(a) A received copy of the bill of lading (reproduced copies are acceptable) including any attached weight certificate copies if issued; or

(b) Other evidence showing points of origin and destination and the weight of your HHG, if no bill of lading was issued, or

(c) If a commercial HHG carrier is not used, you are responsible for establishing the weight of the HHG, and temporary storage by obtaining proper certified weight certificates. Certified weight certificates include the gross and tare weights. This is required because payment at commuted rates on the basis of constructive weight usually is not possible.

**§302-7.105 May an advance of funds be authorized for transporting HHG and temporary storage?**

An advance of funds may be authorized when the transportation of HHG and temporary storage is authorized under the commuted rate method.

**§302-7.106 What documentation is required to receive an advance under the commuted rate method?**

To receive an advance under the commuted rate method, you must provide a copy of an estimate of costs from a commercial HHG carrier or a written statement that includes:

- (a) Origin and destination;
- (b) A signed copy of a commercial bill of lading annotated with actual weight (or other evidence of actual weight) or a reasonable estimate acceptable to your agency; and
- (c) Anticipated temporary storage period (not to exceed 90 days) at Government expense.

**§302-7.107 May my HHG be temporarily stored at Government expense?**

Yes, HHG may be stored at Government expense incident to the transporting of such goods either at the HHG carrier storage facility or a self storage facility. Storage may be at any combination of origin, en route locations or destination.

**§302-7.108 What temporary storage expenses will be reimbursed?**

The following will be reimbursed:

(a) Reimbursable temporary storage cost incident to storage at the HHG carriers facility are:

- (1) Handling in;
- (2) Daily storage;
- (3) Handling out; and
- (4) Drayage to residence.

(b) Reimbursable cost of storage at a self storage facility. This is the cost of the storage space that will reasonably accommodate the HHG transported.

**§302-7.109 Are receipts required?**

Yes, under the commuted rate system, a received copy of the warehouse or other bill for storage is required to support reimbursement.

**§302-7.110 Is there a reimbursement limit?**

Yes, reimbursement must not exceed the rates published in the Nationwide Household Goods Commercial Relocation Tariff (issued by the Household Goods Carriers' Bureau, 1611 Duke Street, Alexandria, VA 22314-3482), supplements thereto and reissues thereof.

## **Subpart C—Actual Expense Method**

### **§302-7.200 How are charges paid and who makes the arrangements for transporting HHG, PBP&E and temporary storage under the actual expense method?**

Your agency is responsible for making all the necessary arrangements for transporting HHG, PBP&E, and temporary storage, including but not limited to packing/unpacking, crating/

uncrating, pickup/delivery, weighing, line-haul, etc., under the actual expense method. Your agency will issue a Bill of Lading or any other shipping document with all charges billed directly to the agency. Any cost or weight in excess of 18,000 pounds will be at your expense. If the shipment exceeds the maximum weight prescribed in [§302-7.2](#), the Government will pay the total charges and the employee will reimburse the Government for the cost of transportation and other charges applicable to the excess weight.

### **§302-7.201 Is temporary storage in excess of authorized limits and excess valuation of goods and services payable at Government expense?**

No, charges for excess weight, valuation above the minimum amount, and services obtained at higher costs must be borne by the employee in the same manner as he/she is responsible for excess transportation costs.

## **Subpart D—Agency Responsibilities**

**Note to Subpart D:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

### **§302-7.300 What policies and procedures must we establish for this part?**

You must establish policies and procedures as required for this part, including who will:

- (a) Administer your household goods program;
- (b) Authorize PBP&E to be transported as an agency administrative expense;
- (c) Authorize temporary storage in excess of the initial 90-day limit;
- (d) Collect any excess cost or charges;
- (e) Advise the employee on the Government's liability for any loss and damage claims under 31 U.S.C. 3721-3723; and
- (f) Ensure that international HHG shipments by water are made on ships registered under the laws of the United States whenever such ships are available.

### **§302-7.301 What method of transporting HHG should we authorize?**

You should authorize one of the following methods, of transporting an employee's HHG, PBP&E and temporary

storage. The selected method should be stated on the relocation travel authorization.

(a) Commuted Rate System. For relocation or first duty station assignment within CONUS. This method will be used without regard to the actual expense method, unless that method is more economical to the Government and results in a savings of \$100 or more. Under this system the employee assumes total responsibility for arranging and paying for, at least the following services: packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, drayage, and temporary storage of your HHG and PBP&E with a commercial HHG carrier or by renting self drive equipment for a do-it-yourself move. When any PBP&E is transported as an administrative expense of the agency, all arrangements (e.g., packing/unpacking, pickup/delivery, weighing, temporary storage, etc.) will be handled and paid for by you the agency.

(b) Actual Expense Method. For all shipments OCONUS and where deemed economical to the Government within CONUS. Under the actual expense method, the Government assumes the responsibility for arranging and paying for all aspects (e.g., packing/unpacking, pickup/delivery, weighing, line-haul, drayage, temporary storage, etc.,) of transporting the employee's HHG, PBP&E.

### **§302-7.302 What method of transporting should we authorize for PBP&E?**

You should authorize the actual expense method for transporting an employee's PBP&E only when the weight of the PBP&E causes the employee's shipment to exceed the maximum 18,000 pound HHG weight limitation. PBP&E should be weighed prior to shipment, if necessary, so the weight can easily be deducted from the 18,000 pound weight allowance. The PBP&E shipment should then be made separately from the HHG shipment and is an administrative expense to your agency.

### **§302-7.303 What guidelines must we follow when authorizing transportation of PBP&E as an administrative expense?**

You have the sole discretion to authorize transportation of PBP&E provided that:

- (a) An itemized inventory of PBP&E is provided for review by the authorizing official at the new official station;
- (b) The authorizing official has certified that the PBP&E are necessary for performance of the employee's duties at the new duty station, and if these items were not transported, the same or similar items would have to be obtained at Government expense for the employee's use at the new official station; and
- (c) You have acquired evidence that transporting the PBP&E would cause the employee's HHG to exceed 18,000 pound maximum weight allowances.

**Note to §302-7.303:** PBP&E transported as an agency administrative expense to an OCONUS location may be returned to CONUS as an agency administrative expense for an employee separating from Government service.

**§302-7.304 When HHG are shipped under the actual expense method, and PBP&E as an administrative expense, in the same lot, are separate weight certificates required?**

Yes, the weight of the PBP&E and the administrative appropriation chargeable must be listed as separate items on the bill of lading or other shipping document.

## **PART 302-8—ALLOWANCES FOR EXTENDED STORAGE OF HOUSEHOLD GOODS (HHG)**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

### **Subpart A—General**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

#### **§302-8.1 When may extended storage of HHG be authorized?**

Your agency may authorize extended storage of HHG under the following circumstances:

- (a) Extended storage of HHG may be authorized in lieu of shipment when:
  - (1) You are assigned to an isolated duty station within CONUS (see [Subpart B](#) of this part);
  - (2) You are assigned to an overseas official station where your agency limits the amount of HHG you may transport to that location;
  - (3) You are assigned to an OCONUS official station and your agency determines extended storage is in the public interest or cost effective to do so; or
  - (4) It is necessary for a temporary change of station (TCS).
- (b) Extended storage of HHG is not permitted for a career SES employee eligible for last move home benefits.

#### **§302-8.2 What is the purpose of extended storage?**

The purpose of extended storage is to assist in protecting personal items when you are:

- (a) Authorized a temporary change of station (TCS) under [§302-3.400](#) of this chapter;
- (b) Assigned to isolated locations in CONUS to which the employee cannot take or at which the employee is unable to use his/her HHG and personal effects because of the absence of residence quarters at that location;
- (c) Assigned OCONUS when:
  - (1) The official station is one to which you cannot take or at which you are unable to use your HHG and your personal effects; or
  - (2) The head of your agency authorizes storage of your HHG is in the public interest or is more economical than transporting; or
- (d) Storage is necessary during school recess for DoDDS teachers.

#### **§302-8.3 How will I know when my agency has made a decision to authorize extended storage of my HHG?**

Your agency will indicate on your travel authorization the specific allowances you are authorized as provided in this chapter.

#### **§302-8.4 May I receive an advance of funds for storage allowances covered by this part?**

No, an advance of funds is not allowed for storage allowances of HHG.

### **Subpart B—Extended Storage During Assignment to Isolated Locations in the Continental United States (CONUS)**

#### **§302-8.100 What is the policy for extended storage of HHG during assignment to isolated locations in CONUS?**

Extended storage of HHG belonging to an employee transferred or a new appointee assigned to an official station at an isolated location in CONUS may be allowed only when it is clearly justified under the conditions in this part and is not primarily for the convenience, or at the request of, the employee or the new appointee.

#### **§302-8.101 What are the criteria for determining whether an official station is an isolated official station for purposes of this part?**

(a) As determined by your agency, an official station at an isolated location is a place of permanent duty assignment in CONUS at which you have no alternative except to live where you are unable to use your HHG because:

- (1) The type of quarters you are required to occupy at the isolated official station will not accommodate your HHG; or
- (2) Residence quarters which would accommodate your HHG are not available within reasonable daily commuting distance of the official station.

(b) The designation of an official station as isolated in accordance with [paragraph \(a\)](#) of this section shall not preclude a determination in individual instances that adequate housing is available for some employees stationed there based on housing which may be available within daily commuting distance and the size and other characteristics of each employee's immediate family. In such instances the station shall not be considered isolated with regard to you if your agency determines adequate family housing is available for you.

**Note to §302-8.101:** Heads of agencies concerned are responsible for designating the isolated official station at which conditions exist for allowing extended storage of HHG at Government expense for some or all employees.

#### §302-8.102 Am I eligible for extended storage of HHG and personal effects?

Yes, you are eligible for extended storage of HHG and personal effects if:

- (a) You are stationed at an isolated official station which your agency determines meets the criteria in §302-8.101;
- (b) You performed relocation travel or travel as a new appointee; and
- (c) Your agency authorizes payment for extended storage of your HHG.

#### §302-8.103 Where may my HHG be stored?

Your HHG may be stored either in:

- (a) Available Government-owned storage space; or
- (b) Suitable commercial storage space obtained by the Government if:
  - (1) Government-owned space is not available, or
  - (2) Commercial storage space is more economical or suitable because of location, transportation costs, or for other reasons.

#### §302-8.104 What are the allowable costs for storage?

Allowable costs for storage include the cost of:

- (a) Necessary packing;
- (b) Crating;
- (c) Unpacking;
- (d) Uncrating;
- (e) Transportation to and from place of storage;
- (f) Charges while in storage; and
- (g) Other necessary charges directly relating to the storage as approved by your agency.

#### §302-8.105 May I transport a portion of my HHG to the official station and store the remainder at Government expense?

Yes, you may transport a portion of your HHG to the official station and store the remainder at Government expense, if authorized by your agency. The combined weight, however, of the HHG stored and transported must not exceed the maximum 18,000 pounds net weight.

#### §302-8.106 May I change from temporary to extended storage?

Yes, you may change from temporary to extended storage, if authorized by your agency.

#### §302-8.107 May I change from storage at personal expense to extended storage at Government expense?

Yes, you may change from storage at personal expense to extended storage at Government expense, if authorized by your agency.

#### §302-8.108 What is the authorized time period for extended storage of my HHG?

The authorized time period for extended storage of your HHG is for the duration of the assignment not to exceed 3-years. However:

- (a) Your agency will conduct periodic reviews to determine whether current housing conditions at your isolated official station warrant continuation of storage;
- (b) Eligibility for extended storage at Government expense will terminate on your last day of active duty at the isolated official station. However your HHG may remain in temporary storage for an additional period of time not to exceed 90 days, if approved by your agency.
- (c) When eligibility ceases, storage at Government expense may continue until the beginning of the second month after the month in which your tour at the official station OCONUS terminates, unless to avoid inequity your agency extends the period.

### Subpart C—Extended Storage During Assignment Outside the Continental United States (OCONUS)

#### §302-8.200 Am I eligible for extended storage during assignment OCONUS?

Yes, you are eligible for extended storage during assignment OCONUS if your agency authorizes it, and if:

- (a) The official station is one to which you are not authorized to take, or at which you are unable to use, your HHG; or
- (b) Your agency authorizes it as being in the public interest; or
- (c) Your agency determines the estimated cost of storage would be less than the cost of round-trip transportation (including temporary storage) of the HHG to your new official station.

#### §302-8.201 Am I entitled to reimbursement for extended storage of HHG?

No, your agency will determine when it is in the Government's interest to reimburse you for extended storage of HHG OCONUS.

**§302-8.202 Do provisions for the place, choice, or type of storage, allowable costs, or partial storage during assignment OCONUS differ from those prescribed for storage during assignment to isolated locations in CONUS?**

No; the same allowable extended storage expenses provided in [§§302-8.103](#) through [302-8.108](#) apply to extended storage OCONUS.

**§302-8.203 What is the authorized time period for extended storage of my HHG?**

Time limitations for extended storage of your HHG will be determined by your agency as follows:

(a) For the duration of the OCONUS assignment plus 30 days prior to the time the tour begins and plus 60 days after the tour is completed;

(b) Extensions may be allowed for subsequent service or tours of duty at the same or other overseas stations if you continue to be eligible as set forth in [§302-8.200](#); and

(c) When eligibility ceases, storage at Government expense may continue until the beginning of the second month after the month in which your tour at the official station OCONUS terminates, unless to avoid inequity your agency extends the period.

**Subpart D—Storage During School Recess for Department of Defense Overseas Dependents School (DoDDS) Teachers**

**§302-8.300 Under what authority am I provided storage during school recess?**

(a) *Description.* The Department of Defense Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 905) provides authority for the storage of the HHG of DoDDS teachers during the recess period between 2 consecutive school years.

(b) *Regulations.* See the DoD Joint Travel Regulations (JTR), Volume 2, published by the Per Diem, Travel and Transportation Allowance Committee and available on the world wide web at <http://www.dtic.mil/perdiem>.

**§302-8.301 What obligations do I have if I do not report for service at the beginning of the next school year?**

If you do not report for service at the beginning of the next school year, you must repay the Government for the cost of

the extended storage of your HHG during the recess. Except for reasons beyond your control and acceptable to DoD, you shall be obligated to reimburse DoD the amount paid for the commercial storage, including related services. If, however, the property was stored in a Government facility, you shall pay DoD an amount equal to the reasonable value of the storage furnished, including related services.

**Subpart E—Agency Responsibilities**

**Note to Subpart E:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-8.400 What policies must we establish for the allowance for extended storage of HHG?**

You must establish policies and procedures governing this part including:

- (a) When you will authorize payment;
- (b) Who will determine whether payment is appropriate;
- (c) How and when reimbursements will be paid;
- (d) Which locations meet the criteria of this part for isolated official station at which conditions exist for allowing extended storage at Government expense for some or all employees;
- (e) Who will determine the duration and place of extended storage.

**§302-8.401 How should we administer the authorization and payment of extended storage of HHG?**

You should limit payment of extended storage of HHG to only those expenses that are necessary and in the interest of the Government.

**§302-8.402 May we allow the employee to determine options in the preference of his/her storage?**

Yes, the employee may determine options in the preference of his/her storage. You may authorize the employee to:

- (a) Transport a portion of his/her HHG to the official station and store the remainder at Government expense;
- (b) Change from temporary to extended storage; and
- (c) Change from storage at personal expense to extended storage at Government expense.

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## PART 302-9—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF A PRIVATELY OWNED VEHICLE

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971-1973 Comp., p. 586.

### Subpart A—General Rules

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

#### §302-9.1 What is a “privately owned vehicle (POV)”?

A “privately owned vehicle (POV)” is a motor vehicle not owned by the Government and used by the employee or his/her immediate family for the primary purpose of providing personal transportation.

#### §302-9.2 What is an “official station” for purposes of this part?

An “official station” is defined in [Part 300-3](#) of this title. For purposes of this part, an “official station” may be within or outside the continental United States (OCONUS).

#### §302-9.3 What is a “post of duty” for purposes of this part?

For purposes of this part, a “post of duty” is an official station outside CONUS.

#### §302-9.4 What are the purposes of the allowance for transportation of a POV?

To reduce the Government’s overall relocation costs by allowing transportation of a POV to your official station within CONUS when it is advantageous and cost effective to the Government, and to improve our overall effectiveness if you are transferred or otherwise reassigned to a post of duty at which it is in the interest of the Government for you to have use of a POV for personal transportation.

#### §302-9.5 What is the purpose of the allowance for emergency storage of a POV?

The purpose of the allowance for emergency storage of a POV is to protect a POV transported at Government expense to your post of duty when the head of your agency determines that the post of duty is within a zone from which your immediate family and/or household goods should be evacuated.

#### §302-9.6 What POV transportation and emergency storage may my agency authorize at Government expense?

Your agency may authorize the following POV transportation and emergency storage at Government expense:

(a) Transportation of a POV to a post of duty as provided in

[Subpart B](#) of this part.

(b) Transportation of a POV from a post of duty as provided in [Subpart C](#) of this part.

(c) Transportation of a POV within CONUS as provided in [Subpart D](#) of this part.

(d) Emergency storage of a POV as provided in [Subpart E](#) of this part.

#### §302-9.7 Must my agency authorize transportation or emergency storage of my POV?

No; however, if your agency does authorize transportation of a POV to your post of duty and you complete your service agreement, your agency must pay for the cost of returning the POV. Your agency determines the conditions under which it will pay for transportation and emergency storage and the procedures a transferred employee must follow.

#### §302-9.8 What type of POV may I be authorized to transport, and if necessary, store under emergency circumstances?

Only a passenger automobile, station wagon, light truck, or other similar vehicle that will be used primarily for personal transportation may be authorized to transport, and if necessary store under emergency circumstances. You may not transport or store a trailer, airplane, or any vehicle intended for commercial use.

#### §302-9.9 For what transportation expenses will my agency pay?

When your agency authorizes transportation of your POV, it will pay for all necessary and customary expenses directly related to the transportation of the POV, including crating and packing expenses, shipping charges, and port charges for readying the POV for shipment at the port of embarkation, and for use at the port of debarkation.

#### §302-9.10 For what POV emergency storage expenses will my agency pay?

Your agency will pay all necessary storage expenses, including but not limited to readying the POV for storage, transportation to point of storage, storage, readying the POV for use after storage, and transportation from the point of storage. Insurance on the POV is at your expense, unless it is included in the expenses allowed by this paragraph.

#### §302-9.11 May I receive an advance of funds for transportation and emergency storage of my POV?

Yes, you may receive advance funds in accordance with [§302-2.20](#) of this chapter and not to exceed the estimated

amount of the expenses authorized under this part for transportation and emergency storage of your POV.

### **§302-9.12 May my agency determine that driving my POV is more advantageous and limit my reimbursement to what it would cost to drive my POV?**

Yes, your agency decides whether it is more advantageous for you and/or a member of your immediate family to drive your POV for all or part of the distance or to have it transported. If your agency decides that driving the POV is more advantageous, your reimbursement will be limited to the allowances provided in [Part 302-4](#) of this chapter for the travel and transportation expenses you and/or your immediate family incur en route.

## **Subpart B—Transportation**

### **General**

#### **§302-9.100 Who is eligible for transportation of a POV to a post of duty?**

An employee who is authorized to transfer to the post of duty, or a new appointee or student trainee assigned to the post of duty.

#### **§302-9.101 In what situations may my agency authorize transportation of a POV to my post of duty?**

Your agency may authorize transportation when:

(a) At the time of your assignment, conditions warrant such authorization under [§302-9.140](#);

(b) Conditions that once precluded prior authorization have changed to warrant such authorization under [§302-9.170](#); or

(c) Subsequent to the time of your assignment, conditions warrant authorization under [§302-9.172](#) of a replacement POV.

#### **§302-9.102 How many POV's may I transport to a post of duty?**

You may transport one POV to a post of duty. However, this does not, however, limit the transportation of a replacement POV when authorized under [§302-9.172](#).

#### **§302-9.103 Do I have to ship my POV to my actual post of duty?**

Yes, you must ship your POV to your actual post of duty. You may not transport the POV to an alternate location.

#### **§302-9.104 What may I do if there is no port or terminal at the point of origin and/or destination?**

If there is no port or terminal at the point of origin and/or destination, your agency will pay the entire cost of transport-

ing the POV from your point of origin to your destination. If you prefer, however, you may choose to drive your POV from your point of origin at time of assignment to the nearest embarkation port or terminal, and/or from the debarkation port or terminal nearest your destination to your post of duty at any time. If you choose to drive, you will be reimbursed your one-way mileage cost, at the rate specified in [Part 302-4](#) of this title, for driving the POV from your authorized origin to deliver it to the port of embarkation, or from the port of debarkation to the authorized destination. For the segment of travel from the port of embarkation back to your authorized origin after delivering the POV to the port or from your authorized destination to the port of debarkation to pick up the POV, you will be reimbursed your one-way transportation cost. The total cost of round-trip travel, to deliver the POV to the port at the origin or to pickup the POV at the port at your destination, may not exceed the cost of transporting the POV to or from the port involved. You may not be reimbursed a per diem allowance for round-trip travel to and from the port involved.

### **POV Transportation at Time of Assignment**

#### **§302-9.140 Under what specific conditions may my agency authorize transportation of a POV to my post of duty upon my assignment to that post of duty?**

Your agency may authorize transportation of a POV to your post of duty when:

(a) It has determined in accordance with [§302-9.503](#) that it is in the interest of the Government for you to have use of your POV at the post of duty;

(b) You have signed a service agreement; and

(c) You meet any specific conditions your agency has established.

#### **§302-9.141 What is the “authorized point of origin” when I transport a POV to my post of duty?**

Your “authorized point of origin” is as follows:

If you are a	Your “authorized point of origin” is your
(a) Transferee	Old official station.
(b) New appointee or student trainee	Place of actual residence.

#### **§302-9.142 What will I be reimbursed if I transport a POV from a point of origin that is different from the authorized point of origin?**

If you transport a POV from a point of origin that is different from the authorized point of origin, you will be reimbursed the transportation costs you incur, not to exceed the cost of transporting your POV from your authorized point of origin to your post of duty.

**§302-9.143 When I am authorized to transport a POV, may I have the manufacturer or the manufacturer's agent transport a new POV from the factory or other shipping point directly to my post of duty?**

Yes, when you are authorized to transport a POV, you may have the manufacturer or the manufacturer's agent transport a new POV from the factory or other shipping point directly to your post of duty provided:

- (a) You purchased the POV new from the manufacturer or manufacturer's agent;
- (b) The POV is transported FOB-shipping point, consigned to you and/or a member of your immediate family, or your agent; and
- (c) Ownership of the POV is not vested in the manufacturer or the manufacturer's agent during transportation. In this circumstance, you will be reimbursed for the POV transportation costs, not to exceed the cost of transporting the POV from your authorized point of origin to your post of duty.

**POV Transportation Subsequent to the Time of Assignment****§302-9.170 Under what specific conditions may my agency authorize transportation of a POV to my post of duty subsequent to the time of my assignment to that post?**

Your agency may authorize transportation of a POV to your post of duty subsequent to the time of your assignment to that post when:

- (a) You do not have a POV at your post of duty;
- (b) You have not previously been authorized to transport a POV to that post of duty;
- (c) You have not previously transported a POV outside CONUS during your assignment to that post of duty;
- (d) Your agency has determined in accordance with [§302-9.503](#) that it is in the interest of the Government for you to have use of your POV at the post of duty; and
- (e) You signed a service agreement at the time you were transferred in the interest of the Government, or assigned if you were a new appointee or student trainee, to your post of duty; and
- (f) You meet any specific conditions your agency has established.

**§302-9.171 If circumstances warrant an authorization to transport a POV to my post of duty after my assignment to the post of duty, must I sign a new service agreement?**

No, if circumstances changed after arrival at your new post of duty to warrant authorization to transport a POV, you are

not required to sign a new service agreement, provided a service agreement was signed at the time of your assignment to the post of duty. Violation of that service agreement, however, will result in your personal liability for the cost of transporting the POV.

**§302-9.172 Under what conditions may my agency authorize transportation of a replacement POV to my post of duty?**

Your agency may authorize transportation of a replacement POV to your post of duty when:

- (a) You require an emergency replacement POV and you meet the following conditions:

- (1) You had a POV which was transported to your post of duty at Government expense; and

- (2) You require a replacement POV for reasons beyond your control and acceptable to your agency, such as the POV is stolen, or seriously damaged or destroyed, or has deteriorated due to conditions at the post of duty; and

- (3) Your agency determines in advance of authorization that a replacement POV is necessary and in the interest of the Government; or

- (b) You require a non-emergency replacement POV and you meet the following conditions:

- (1) You have a POV which was transported to a post of duty at Government expense;

- (2) You have been stationed continuously during a 4-year period at one or more posts of duty; and

- (3) Your agency has determined that it is in the Government's interest for you to continue to have a POV at your post of duty.

**§302-9.173 How many replacement POV's may my agency authorize me to transport to my post of duty at Government expense?**

Your agency may authorize one emergency replacement POV within any 4-year period of continuous service. It may authorize one non-emergency replacement POV after every four years of continuous service beginning on the date you first have use of the POV being replaced.

**§302-9.174 What is the "authorized point of origin" when I transport a POV, including a replacement POV, to my post of duty subsequent to the time of my assignment to that post of duty?**

Your agency determines the authorized point of origin within the United States when you transport a POV, including a replacement POV, to your post of duty subsequent to the time of your assignment to that post of duty.

**§302-9.175 When I am authorized to transport a POV, including a replacement POV, to my post of duty subsequent to the time of my assignment to that post of duty, may I have the manufacturer or the manufacturer's agent transport a new POV from the factory or other shipping point directly to my post of duty?**

Yes, you may have the manufacturer or manufacturer's agent transport a new POV from the factory or other shipping point to your post of duty under the same conditions specified in [§302-9.143](#).

### **Subpart C—Return Transportation of a POV From a Post of Duty**

**§302-9.200 When am I eligible for return transportation of a POV from my post of duty?**

You are eligible for POV transportation from your post of duty when:

- (a) You were transferred to a post of duty in the interest of the Government; and
- (b) You have a POV at the post of duty.

**§302-9.201 In what situations will my agency pay to transport a POV from my post of duty?**

Your agency will pay to transport a POV from your post of duty when:

- (a) You are transferred back to the official station (including post of duty) from which you transferred to your current post of duty;
- (b) You are transferred to a new official station within CONUS;
- (c) You are transferred to a new post of duty, where your agency determines that use of a POV at that location is not in the interest of the Government;
- (d) You separate from Government service after completion of an agreed period of service at the post of duty where your agency determined the use of a the POV to be in the interest of the Government;
- (e) You separate from Government service prior to completion of an agreed period of service at the post of duty where your agency determined the use of a POV to be in the interest of the Government, and the separation is for reasons beyond your control and acceptable to your agency; or
- (f) Conditions change at your post of duty such that use of the POV no longer is in the best interest of the Government.

**§302-9.202 When do I become entitled to return transportation of my POV from my post of duty to an authorized destination?**

You become entitled to return transportation of your POV from your post of duty to an authorized destination when:

- (a) Your agency determined the use of a POV at your post of duty was in the interest of the Government;
- (b) You have the POV at your post of duty; and
- (c) You have completed your service agreement.

**§302-9.203 Is there any circumstance under which I may be authorized to transport my POV from a post of duty before completing my service agreement?**

Yes, if conditions change at your post of duty such that use of your POV no longer is in the interest of the Government, or if you separate from Government service prior to completion of your service agreement for reasons beyond your control and acceptable to your agency, your agency may authorize return transportation to your authorized destination. When the return transportation is based on changed conditions, you are still required to complete your service agreement. If you do not, you will be required to repay the transportation costs.

**§302-9.204 What is the “authorized point of origin” when I transport my POV from my post of duty?**

The “authorized point of origin” when you transport your POV from your post of duty is the last post of duty to which you were authorized to transport your POV at Government expense.

**§302-9.205 What is the “authorized destination” of a POV transported under this subpart?**

The “authorized destination” of a POV transported under this subpart is illustrated in the following table:

If	The authorized destination of the POV you transport at Government expense is
(a) You are transferred to an Official station within CONUS.	Your official station.
(b)	<p>(1) You are transferred to another post of duty and use of a POV at the new post is not in the interest of the Government;</p> <p>(2) You separate from Government service and are eligible for transportation of your POV from your post of duty; or</p> <p>(3) Conditions change at your post of duty such that use of your POV no longer is in the interest of the Government at that post of duty.</p>
	Your place of actual residence.

**§302-9.206 What should I do if there is no port or terminal at my authorized point of origin or authorized destination when I transport a POV from my post of duty?**

If there is no port or terminal at your authorized point of origin or authorized destination, your agency will pay the entire cost of transporting the POV from your authorized origin to your authorized destination. If you prefer, however, you may choose to drive your POV to the port of embarkation and/or from the port of debarkation. If you choose to drive, you will be reimbursed in the same manner as an employee under [§302-9.104](#).

**§302-9.207 What will I be reimbursed if I transport my POV from a point of origin or to a destination that is different from my authorized origin or destination?**

You will be reimbursed the transportation costs you actually incur, not to exceed what it would have cost to transport your POV from your authorized origin to the authorized destination.

**§302-9.208 If I retain my POV at my post of duty after conditions change to make use of the POV no longer in the best interest of the Government, may I transport it at Government expense from the post of duty at a later date?**

Yes, your agency will pay the transportation costs not to exceed the cost of transporting it to the authorized destination, provided you otherwise meet all conditions for transporting a POV.

**§302-9.209 Under what conditions may my agency authorize me to transport from my post of duty a replacement POV purchased at that post of duty?**

Your agency may authorize transportation of a replacement POV purchased at a post of duty from the same post of duty only if:

- (a) At the time you purchased the replacement POV, you met the conditions in [§302-9.172](#); and
- (b) Prior to purchase of the replacement POV, your agency authorized you to purchase a replacement POV at the post of duty.

**Subpart D—Transportation of a POV Within the Continental United States (CONUS)**

**§302-9.300 When am I eligible for transportation of my POV within CONUS at Government expense?**

You are eligible for transportation of your POV within CONUS at Government expenses when:

- (a) You are an employee who transfers within CONUS in the interest of the Government; or

(b) You are a new appointee or student trainee relocating to your first official station within CONUS.

**§302-9.301 Under what conditions may my agency authorize transportation of my POV within CONUS?**

Your agency will authorize transportation of your POV within CONUS only when:

(a) It has determined that use of your POV to transport you and/or your immediate family from your old official station (or place of actual residence, if you are a new appointee or student trainee) to your new official station would be advantageous to the Government;

(b) Both your old official station (or place of actual residence, if you are a new appointee or student trainee) and your new official station are located within CONUS; and

(c) Your agency further determines that it would be more advantageous and cost effective to the Government to transport your POV to the new official station at Government expense and to pay for transportation of you and/or your immediate family by commercial means than to have you or an immediate family member drive the POV to the new official station.

**§302-9.302 How many POV's may I transport within CONUS?**

You may transport any number of POV's within CONUS under this subpart, provided your agency determines such transportation is advantageous and cost effective to the Government.

**§302-9.303 If I am authorized to transport my POV within CONUS, where must the transportation originate?**

If you are authorized to transport your POV within CONUS, the transportation must originate as illustrated in the following table:

If you are a	Your transportation must originate at your
(a) Transferee,	Old official station.
(b) New appointee or Student trainee,	Place of actual residence.

**§302-9.304 If I am authorized to transport my POV within CONUS, what must the destination be?**

If you are authorized to transport your POV within CONUS your destination must be your new official station.

**Subpart E—Emergency Storage of a POV**

**§302-9.400 When am I eligible for emergency storage of my POV?**

You are eligible for emergency storage of your POV when:

- (a) Your POV was transported to your post of duty at Government expense; and

(b) The head of your agency determines that your post of duty is within a zone from which your immediate family and/or household goods should be evacuated.

**§302-9.401 Where may I store my POV if I receive notice to evacuate my immediate family and/or household goods from my post of duty?**

If you receive notice to evacuate your immediate family and/or HHG for your post of duty, you may store your POV at a place determined to be reasonable by your agency whether the POV is already located at, or being transported to, your post of duty.

**Subpart F—Agency Responsibilities**

**Note to Subpart F:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-9.500 What means of transportation may we authorize for POV's?**

You may authorize:

- (a) Commercial means of transportation for POV's if available at reasonable rates and under reasonable conditions; or
- (b) Government means of transportation for POV's on a space-available basis.

**§302-9.501 How should we administer the allowances for transportation and emergency storage of a POV?**

To minimize costs and promote an efficient workforce, you should provide an employee use of his/her POV when it mutually benefits the Government and the employee.

**§302-9.502 What governing policies must we establish for the allowances for transportation and emergency storage of a POV?**

You must establish policies governing:

- (a) When you will authorize transportation and emergency storage of a POV;
- (b) When you will authorize transportation of a replacement POV;
- (c) Who will determine if transportation of a POV to or from a post of duty is in the interest of the Government;

(d) Who will determine if conditions have changed at an employee's post of duty to warrant transportation of a POV in the interest of the Government;

(e) Who will determine if transportation of a POV wholly within CONUS is more advantageous and cost effective than having the employee drive the POV to the new official station; and

(f) Who will determine whether to allow emergency storage of an employee's POV, including where to store the POV.

**§302-9.503 Under what condition may we authorize transportation of a POV to a post of duty?**

You may authorize transportation of a POV to a post of duty only when you determine, after consideration of the factors in [§302-9.504](#), that it is in the interest of the Government for the employee to have use of a POV at the post of duty.

**§302-9.504 What factors must we consider in deciding whether to authorize transportation of a POV to a post of duty?**

When deciding whether to authorize transportation of a POV to a post of duty, you must consider if:

- (a) Local conditions at the employee's post of duty warrant use of a POV;
- (b) Use of the POV will contribute to the employee's effectiveness on the job;
- (c) Use of a POV of the type involved will be suitable under local conditions at the post of duty; and
- (d) The cost of transporting the POV to and from the post of duty will be excessive, considering the time the employee has agreed to serve.

**§302-9.505 What must we consider in determining whether transportation of a POV within CONUS is cost effective?**

When determining whether transportation of a POV within CONUS is cost effective, you must consider the:

- (a) Cost of traveling by POV;
- (b) Cost of transporting the POV;
- (c) Cost of travel if the POV is transported;
- (d) Productivity benefit you derive from the employee's accelerated arrival at the new official station.

## **PART 302-10—ALLOWANCES FOR TRANSPORTATION OF MOBILE HOMES AND BOATS USED AS A PRIMARY RESIDENCE**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905 (a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

### **Subpart A—Eligibility and Limitations**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

#### **§302-10.1 May I be reimbursed for transporting my mobile home instead of an HHG shipment?**

Yes, if you are eligible for the transportation of HHG, you will be reimbursed for transporting a mobile home instead of an HHG shipment, not to exceed what the Government would incur for the transportation of your HHG and 90-days temporary storage.

#### **§302-10.2 Are there any eligibility requirements?**

Yes, to have a mobile home transported at Government expense, you must certify that the mobile home will be used at the new official station as your primary residence and/or the primary residence of your immediate family.

#### **§302-10.3 What is the maximum amount my agency may authorize me to receive for transporting a mobile home?**

The maximum amount your agency may authorize you to receive for transporting a mobile home shall not exceed the cost of transporting 18,000 pounds of HHG and 90 days of temporary storage.

#### **§302-10.4 Are there any geographic limitations for transportation of a mobile home?**

Yes, allowances for overland transportation of a mobile home may be made only for transportation within CONUS, within Alaska, and through Canada en route between Alaska and CONUS or through Canada between one CONUS point and another (e.g., between Buffalo, NY and Detroit, MI). Allowances for transportation within limits prescribed may be paid even though the transportation involved originates, terminates, or passes through locations not covered, provided the amount of the allowance shall be computed on the basis of that part of the transportation which is within CONUS, within Alaska, or through Canada en route between Alaska and CONUS or between one CONUS point and another. The cost to transport a mobile home may not exceed the cost of shipping 18,000 pounds of HHG and 90 days of temporary storage.

#### **§302-10.5 May I transport a mobile home over water?**

Yes, you may transport a mobile home over water when both the points of origin and destination are within CONUS or Alaska.

#### **§302-10.6 Are the allowances for transporting a mobile home in addition to the allowances for per diem, mileage, and transportation expenses, for me and my immediate family member(s)?**

Yes, allowances for transporting a mobile home (including mileage when towed by you) are in addition to the reimbursement of per diem, mileage, and transportation expenses for you and your immediate family member(s). However, you must consider the fact that the mobile home may be moved at Government expense only if it will be used as your residence at the new official station, and allowances under [Parts 302-5, 302-6](#), and [302-11](#) of this chapter will be paid accordingly.

### **Subpart B—Computation of Distance**

#### **§302-10.100 What distance will my agency allow for points of origin and destination within CONUS and Alaska?**

Your agency will allow for the distance shown in standard highway mileage guides or agency designated official table of distances or actual miles driven as determined from your odometer readings, between the authorized origin and destination.

#### **§302-10.101 Must I furnish actual odometer readings on the travel claim?**

No, you do not need to furnish odometer readings on the travel claim but you must indicate the total miles traveled. Any deviation from the distances indicated in standard highway mileage guides or agency official table of distances must be fully explained and acceptable to your agency.

### **Subpart C—Computation of Allowances**

#### **§302-10.200 What costs are allowable when a commercial carrier transports my mobile home overland or over water?**

Your agency will allow the following costs for use of a commercial carrier transporting your mobile home:

(a) When transporting overland;

(1) The carrier's charge for actual transportation of the mobile home (not to exceed the applicable tariff for such movements approved by an appropriate regulatory body), provided any substantial deviation from standard highway

mileage guides or agency official table of distances is explained;

- (2) Ferry fares, bridge, road, and tunnel tolls;
  - (3) Taxes, charges or fees fixed by a State or other government authority for permits to transport mobile homes in or through its jurisdiction;
  - (4) Carrier's service charges for obtaining necessary permits; and
  - (5) Charges for a pilot (flag) car or escort services, when required by State or local law.
- (b) When transporting over water cost must include, but not limited to the cost of:
- (1) Fuel and oil used for propulsion of the boat;
  - (2) Pilots or navigators in the open water;
  - (3) A crew;
  - (4) Charges for harbor pilots;
  - (5) Docking fees incurred in transit;
  - (6) Harbor or port fees and similar charges related to entry in and navigation through ports; and
  - (7) Towing, whether in tow or towing by pushing from behind.

**§302-10.201 What is the mileage allowance when you transport a mobile home overland by a POV?**

The mileage allowance when you transport a mobile home overland by other than commercial means (e.g., towed by a POV) is eleven cents per mile. This is in addition to the mileage allowance prescribed for driving the POV under [Part 302-4](#) of this chapter.

**§302-10.202 Am I entitled to any other allowances when I transport my mobile home by POV?**

Yes, you are also entitled to the following allowances when you transport your mobile home by POV:

- (a) Payment of mileage for use of a POV to transport yourself and /or immediate family member(s) as provided in [§302-4.300](#) of this chapter; and
- (b) Preparation costs as provided in [§302-10.205](#).

**§302-10.203 What are my allowances when a mobile home is transported partly by commercial carrier and partly by POV?**

The allowances in [§§302-10.200](#) through [302-10.202](#) apply to the respective portions of transportation by commercial carrier and POV when a mobile home is transported by both.

**§302-10.204 What costs are allowed for preparing a mobile home for shipment?**

Allowable costs for preparing a mobile home for shipment include but are not limited to:

- (a) Blocking and unblocking (including anchoring and unanchoring);
- (b) Labor costs of removing and installing skirting;
- (c) Separating, preparing, and sealing each section for movement;
- (d) Reassembling the two halves of a double-wide mobile home;
- (e) Travel lift fees;
- (f) Rental, installation, removal and transportation of hitches and extra axles with wheels and tires;
- (g) Purchasing blocks in lieu of transporting blocks from old official station and cost of replacement blocks broken while mobile home was being transported;
- (h) Packing and unpacking of HHG associated with the mobile home;
- (i) Disconnecting and connecting utilities;
- (j) Installation and removal of towing lights on trailer;
- (k) Charges for reasonable extension of existing water and sewer lines; and
- (l) Dismantling and assembling a portable room appended to a mobile home.

**§302-10.205 Are there any costs for preparation that are not allowed?**

Yes, costs for preparing a mobile home located outside Alaska or CONUS for movement or the costs for resettling outside Alaska or CONUS are not allowed.

**§302-10.206 May my agency assume direct responsibility for the costs of preparing and transporting my mobile home?**

Yes, your agency may assume direct responsibility for the costs of preparing and transporting your mobile home if it is determined to be in the Government's interest.

**§302-10.207 Am I responsible for excess or non-allowable charges?**

Yes, you are responsible for any excess preparation or transportation or non-allowable charges, such as:

- (a) Costs for replacement parts, tires purchases, structural repairs, brake repairs or any other repairs or maintenance performed;
- (b) Costs of insurance for valuation of mobile homes above carriers' maximum liabilities, or charges designated in the tariffs as "Special Service;"
- (c) Cost of storage; and
- (d) Costs of connecting/disconnecting appliances, equipment, and utilities involved in relocation and costs of converting appliances for operation on available utilities.

**Subpart D—Advance of Funds****§302-10.300 May I receive an advance of funds when a commercial carrier transports the mobile home?**

Yes, you may receive an advance of funds when you are responsible for arranging and paying a commercial carrier to transport your mobile home. However, the advance may not exceed the estimated amount allowable.

**§302-10.301 May I receive an advance of funds when payment is made directly to the carrier by my agency?**

No, your agency will not authorize you an advance of funds when it pays the carrier directly.

**Subpart E—Agency Responsibilities**

**Note to Subpart E:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-10.400 What policies must we establish for authorizing transportation of a mobile home?**

You must establish policies for authorizing transportation of a mobile home that implements this part including when:

(a) It is considered in the best interest of the Government to assume direct responsibility for preparing and transporting an employee’s mobile home;

(b) To authorize an advance of funds for a commercial carrier transporting an employee’s mobile home based on constructive or estimated cost when the employee assumes direct responsibility for payment.

**§302-10.401 Are the allowances for transporting a mobile home in addition to the allowances for per diem, mileage, and transportation expenses, for an employee and immediate family member(s)?**

Yes, allowances for transporting a mobile home (including mileage when towed by the employee) are in addition to the allowances for per diem, mileage, and transportation expenses. However, you must consider the fact that the mobile home will be used as the employee’s and/or immediate family member(s) primary residence at the new official station, and reduce the allowances under [Parts 302-5, 302-6](#), and [302-11](#) of this chapter.

**§302-10.402 What costs must we pay a commercial carrier for transporting a mobile home?**

The costs you must pay a commercial carrier for transporting a mobile home are prescribed in [§302-10.200](#).

**§302-10.403 What costs must we allow for preparing a mobile home for shipment?**

The costs you must allow for preparing a mobile home for shipment are prescribed in [§302-10.205](#).

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## **SUBCHAPTER E—RESIDENCE TRANSACTION ALLOWANCES**

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**PART 302-11—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS**

**Authority:** 5 U.S.C. 5738 and 20 U.S.C. 905(c).

**Subpart A—General Rules**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

**§302-11.1 What is the purpose of an allowance for expenses incurred in connection with residence transactions?**

The purpose of an allowance for expenses incurred in connection with residence transaction is to reimburse you when you transfer from an old official station to a new official station for expenses that you incur due to:

- (a) The sale of one residence at your old official station, and/or the purchase of a residence at your new official station; or
- (b) The settlement expenses for a lease which has not expired on your residence or mobile home lot which is used as your permanent residence at your old official station.

**§302-11.2 Am I eligible to receive an allowance for expenses incurred in connection with my residence transactions?**

You are eligible to receive an allowance for expenses incurred in connection with your residence transactions under this subpart if you have signed a service agreement as specified in Subpart D of Part 302-3 of this chapter, and you are performing a permanent change of station where:

- (a) Your old and new official stations are within the United States; or
- (b) You transferred from an official station in the United States to a foreign area, and you are now transferring back to the United States and;
  - (1) You have completed your service agreement time period for your overseas tour of duty; and
  - (2) You are assigned to an official station in the United States that is more than 50 miles from your last official station in the United States, unless authorized otherwise in accordance with §302-2.6 of this chapter.

**§302-11.3 Must I sign a service agreement before receiving residence transaction allowances?**

Yes, you must sign a service agreement before receiving residence transaction allowances.

**§302-11.4 Who is not eligible to receive an allowance for expenses incurred in connection with residence transactions?**

You are not eligible to receive an allowance for expenses incurred in connection with residence transactions under this subpart if you are:

- (a) A new appointee; or
- (b) An employee assigned under the Government Employees Training Act (5 U.S.C. 4109).

**§302-11.5 To be reimbursed for expenses incurred in my residence transactions, must I occupy the residence at the time I am notified of my transfer?**

Yes, to be reimbursed for expenses incurred in your residence transactions, you must occupy the residence at the time you are notified of your transfer, unless your transfer is from a foreign area to an official station within the United States other than the one you left when you transferred out of the United States, as specified in §302-11.2(b).

**§302-11.6 For which expenses will I be reimbursed if I qualify for a residence transaction expense allowance?**

If you qualify for a residence transaction expense allowance, you may be reimbursed for the:

- (a) Expenses of selling your old residence and purchasing a new residence in the United States; or
- (b) Settlement of an unexpired lease at your old official station in the United States from which transferred to another official station in the United States or when assigned to a foreign post of duty; and
- (c) Expenses of purchasing a new residence in the United States upon return to the United States upon completion of the foreign tour of duty and the return is to a different official station, and is 50 miles distance from the official station which you transferred from.

**§302-11.7 When are expenses for my settlement of an unexpired lease reimbursable?**

When your unexpired lease (including month to month) is for residence quarters at your old official station, you may be reimbursed for settlement expenses for an unexpired lease, including but not limited to broker's fees for obtaining a sublease or charges for advertising if:

- (a) Applicable laws or the terms of the lease provide for payment of settlement expenses; or
- (b) Such expenses cannot be avoided by sublease or other arrangement; or
- (c) You have not contributed to the expenses by failing to give appropriate lease termination notice promptly after you have definite knowledge of your transfer; or

(d) The broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality.

**§302-11.8 Must I sell a residence at the old official station to be eligible to purchase a residence at the new official station?**

No, you do not have to sell the residence at your old official station to be eligible for residence purchase transactions at your new official station.

**Time Limitations**

**§302-11.21 How long do I have to submit my claim for reimbursement of expenses incurred in connection with my residence transactions?**

Your claim for reimbursement should be submitted to your agency as soon as possible after the transaction occurred. However, the settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested must occur not later than 2 years after the day you report for duty at your new official station. (See [§302-11.23](#))

**§302-11.22 May the 2-year time limitation be extended by my agency?**

Yes, your agency may extend the 2-year limitation for up to two additional years for reason beyond your control and acceptable to the agency.

**§302-11.23 When must I request to have my initial time period extended?**

To have your initial time period extended, you must submit a request to your agency not later than 30 calendar days after the expiration date unless this 30-day period is specifically extended by your agency.

**Subpart B—Title Requirements**

**§302-11.100 For which residence may I receive reimbursement for under this subpart?**

You may receive reimbursement for the one residence from which you regularly commute to and from work on a daily basis and which was your residence at the time you were officially notified by competent authority to transfer to a new official station.

**§302-11.101 Must the title to the property for which I am requesting an allowance for residence transactions be in my name?**

The title to the property for which you are requesting an allowance for residence transaction must be:

(a) Solely in your name; or

(b) Solely in the name of one or more of your immediate family members; or

(c) Jointly in your name and in the name of one or more of your immediate family members.

**§302-11.102 How will the Government determine who holds title to my property?**

The Government will determine who holds title to your property based on:

(a) Whose name(s) actually appears on your title document (e.g., the deed); or

(b) Who holds equitable title interest in your property as specified in [§302-11.105](#).

**§302-11.103 How will I be reimbursed if I or a member of my immediate family do not hold full title to the property for which I am requesting reimbursement?**

If you or a member of your immediate family do not hold full title to the property for which you are requesting reimbursement, you will be reimbursed on a pro rata basis to the extent of your actual title interest plus your equitable title interest in the residence.

**§302-11.104 When must I and/or a member(s) of my immediate family have acquired title interest in my residence to be eligible for the allowance for expenses incurred in connection with the sale of my residence?**

To be eligible for the allowance for expenses incurred in connection with the sale of your residence, you and/or a member(s) of your immediate family must have acquired title or equitable title interest in the residence as illustrated in the following table:

Type of Transfer	Date
(1) Between official stations in the United States.	(1) Prior to the date first notified of the transfer.
(2) Returning from completion of an foreign tour of duty to a different official station in the Untied States, which is 50 miles distance from the official station from which transferred to the foreign official station.	(2) Prior to the date notified that you would be transferred to a different location in the United States, which is 50 miles distance from the official station you transferred from to the foreign area.

**§302-11.105 How is it determined if I hold “equitable title interest” in my residence?**

“Equitable title interest” in your residence is determined by your agency if:

(a) The title is held in trust, and:

(1) The property is your residence;

(2) You and/or a member(s) of your immediate family are the only beneficiary(ies) of the trust during either of your lifetimes;

(3) You and/or a member(s) of your immediate family retain the right to distribute the property during your lifetimes;

(4) You and/or a member(s) of your immediate family retain the right to manage the property;

(5) You and/or a member(s) of your immediate family are the only grantor/settlor of the trust, or retain the right to direct distribution of the property upon dissolution of the trust or death; and

(6) You provide your agency with a copy of the trust document; or

(b) The title is held in the name of a financial institution, and:

(1) The property is your residence;

(2) You and/or a member(s) of your immediate family executed a financing agreement (e.g., mortgage) with the financial institution;

(3) State or local law requires that lending parties take title to perfect (i.e., protect) a security interest in the property, or the financial institution requires that it take possession of title as a condition of the financing agreement; and

(4) You provide your agency with a copy of the financing document; or

(c) The title is held both in the names of:

(1) You solely, or jointly with one or more members of your immediate family, or one or more members of your immediate family;

(2) An individual accommodation party as defined in [§302-11.106](#) who is not a member of your immediate family; and

(3) The conditions apply:

(i) The property is your residence.

(ii) You and/or a member(s) of your immediate family have the right to use the property and to direct conveyance of the property.

(iii) The lender requires signature of the accommodation party on the financing document.

(iv) You and/or a member of your immediate family, are liable for payments under the financing arrangement (e.g., mortgage).

(v) The accommodation party's name is on the title.

(vi) The accommodation party does not have a financial interest in the property unless the employee and/or a member(s) of the immediate family default on the financing arrangement.

(vii) You must provide documentation of the accommodation that is acceptable by your agency; or

(d) The title is held by the seller of the property and the following conditions are met:

(1) The property is your residence;

(2) You and/or member(s) of your immediate family has the right to use the property and to direct conveyance of the property;

(3) You and/or member(s) of your immediate family must have signed a financing agreement with the seller of the property (e.g., a land contract) providing for fixed periodic payments and transfer of title to the employee and/or a member(s) of the immediate family upon completion of the payment schedule; and

(4) You provide your agency with a copy of the financing agreement; or

(e) Another equitable title situation exists where title is held in your name only or jointly with you and one or more members of your immediate family or with you and an individual who is not an immediate family member, and the following conditions are met:

(1) The property is your residence.

(2) You and/or a member(s) of your immediate family has the right to use the property and to direct conveyance of the property.

(3) Only you and/or a member(s) of your immediate family has made payments on the property.

(4) You and/or a member(s) of your immediate family received all proceeds from the sale of the property.

(5) You must provide suitable documentation to your agency that all conditions in [paragraphs \(e\)\(1\)](#) through [\(e\)\(4\)](#) of this section are met.

### **§302-11.106 What is an accommodation party?**

An accommodation party is an individual who signs an employee's financing agreement (e.g., a mortgage) to lend his/her name (i.e., credit) to the arrangement.

## **Subpart C—Reimbursable Expenses**

### **§302-11.200 What residence transaction expenses will my agency pay?**

Provided that they are customarily paid by the seller of a residence at the old official station or by the purchaser of a residence at the new official station, your agency will pay the following expenses:

(a) Your broker's fee or real estate commission that you pay in the sale of your residence at the last official station, not to exceed the rates that are generally charged in the locality of your old official station;

(b) The customary cost for an appraisal;

(c) The costs of newspaper, bulletin board, multiple-listing services, and other advertising for sale of the residence at your old official station that is not included in the broker's fee or the real estate agent's commission;

(d) The cost of a title insurance policy, costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; cost of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses incurred for selling your residence to the extent such costs:

(1) Have not been included in other residence transaction fees (i.e., brokers' fees or real estate agent fees);

(2) Do not exceed the charges, for such expenses, that are normally charged in the locality of your residence;

(3) Are usually furnished by the seller;

(e) The costs of searching title, preparing abstracts, and the legal fees for a title opinion to the extent such costs:

(1) Have not been included in other related transaction costs (i.e., broker's fees or real estate agency fees); and

(2) Do not exceed the charges, for such expenses, that are customarily charged in the locality of your residence.

(f) The following "other" miscellaneous expenses in connection with the sale and/or purchase of your residence, provided they are normally paid by the seller or the purchaser in the locality of the residence, to the extent that they do not exceed specifically stated limitations, or if not specifically stated, the amounts customarily paid in the locality of the residence:

(1) FHA or VA fees for the loan application;

(2) Loan origination fees and similar charges such as loan assumption fees, loan transfer fees or other similar charges not to exceed 1 percent of the loan amount without itemization of the lender's administrative charges (unless requirements in §302-11.201 are met), if the charges are assessed in lieu of a loan origination fee and reflects charges for services similar to those covered by a loan origination fee;

(3) Cost of preparing credit reports;

(4) Mortgage and transfer taxes;

(5) State revenue stamps;

(6) Other fees and charges similar in nature to those listed in paragraphs (f)(1) through (f)(5) of this section, unless specifically prohibited in §302-11.202;

(7) Charge for prepayment of a mortgage or other security instrument in connection with the sale of the residence at the old official station to the extent the terms in the mortgage or other security instrument provide for this charge. This prepayment penalty is also reimbursable when the mortgage or other security instrument does not specifically provide for prepayment, provided this penalty is customarily charged by the lender, but in that case the reimbursement may not exceed 3 months' interest on the loan balance;

(8) Mortgage title insurance policy, paid by you, on a residence you purchased for the protection of, and required by, the lender;

(9) Owner's title insurance policy, provided it is a prerequisite to financing or the transfer of the property; or if the cost of the owner's title insurance policy is inseparable from the cost of other insurance which is a prerequisite;

(10) Expenses in connection with construction of a residence, which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence;

(11) Expenses in connection with environmental testing and property inspection fees when required by Federal,

State, or local law; or by the lender as a precondition to sale or purchase; and

(12) Other expenses of sale and purchase made for required services that are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station.

### **§302-11.201 When may my reimbursement for loan assumption fees or other similar fees exceed the 1 percent as specified in §302-11.200(f)(2)?**

Reimbursement may exceed 1 percent (as specified in §302-11.200(f)(2)) only when you provide evidence that the higher rate:

(a) Does not include prepaid interest, points, or a mortgage discount; and

(b) Is customarily charged in the locality where the residence is located.

### **§302-11.202 What residence transaction expenses will my agency not pay?**

Your agency will not pay:

(a) Any fees that have been inflated or are higher than normally imposed for similar services in the locality;

(b) Broker fees or commissions paid in connection with the purchase of a home at the new official station;

(c) Owner's title insurance policy, "record title" insurance policy, mortgage insurance or insurance against loss or damage of property and optional insurance paid for by you in connection with the purchase of a residence for your protection;

(d) Interest on loans, points, and mortgage discounts;

(e) Property taxes;

(f) Operating or maintenance costs;

(g) Any fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226), unless specifically authorized in §302-11.200;

(h) Expenses that result from construction of a residence, except as provided in §302-11.200(f)(10); and

(i) Losses, see §302-11.304.

## **Subpart D—Request for Reimbursement**

### **§302-11.300 Is there a limit on how much my agency will reimburse me for residence transactions?**

Yes, your agency will reimburse you no more than:

(a) Ten percent of the actual sales price for the sale of your residence at the old official station; and

(b) Five percent of the actual purchase price of the residence for the purchase of a residence at the new official station.

**§302-11.301 How must I request reimbursement for the expenses I incur for my residence transactions?**

To request reimbursement for the expenses you incur for your residence transaction, you must:

(a) Send your claim for reimbursement and documentation of expenses to your old official station for review and approval unless otherwise specified by your agency, and

(b) Follow your agency's procedures and submit appropriate voucher(s) along with any claim applications that your agency may require with appropriate documents specified in [§302-11.302](#).

**§302-11.302 What documentation must I submit to my agency to request reimbursement for the sale of a former residence or the purchase of a new one?**

To request reimbursement for the sale of a former residence or the purchase of a new one, you must submit to your agency:

(a) Copies of your sales agreement when selling a residence;

(b) Your purchase agreement when a purchasing a residence;

(c) Property settlement documents;

(d) Loan closing statements; and

(e) Invoices or receipts for other bills paid.

**§302-11.303 Will the Government reimburse me for expenses incurred in connection with my residence transactions that are paid by someone other than me or a member of my immediate family?**

No, the Government will not reimburse you for expenses incurred in connection with your residence transactions if they are paid by someone other than you or a member of your immediate family.

**§302-11.304 Will my agency reimburse me for losses due to market conditions or prices at the old and new official station?**

No, losses incurred due to market conditions or prices at your old and new duty station are not reimbursable when incurred by you due to:

(a) Failure to sell a residence at the old official station at the price asked, or at its current appraised value, or at its original cost; or

(b) Failure to buy a dwelling at the new official station at a price comparable to the selling price of the residence at the old official station; or

(c) Any losses that are similar in nature to [\(a\)](#) or [\(b\)](#).

**§302-11.305 Will I receive reimbursement for any residence transaction expenses incurred prior to being officially notified of my transfer?**

No, reimbursement of any residence transaction expenses (or settlement of an unexpired lease) that occurs prior to being officially notified (generally in the form a change of station travel authorization) is prohibited.

**§302-11.306 How can I know if my expenses are reasonable and will be reimbursed by the Government?**

You are responsible for the determination of reasonableness for your claimed expenses. To determine if your expenses are reasonable, you should, in coordination with your agency, contact the local real estate association, or, if not available, at least three different realtors in the locality in which your expenses will be incurred and request:

(a) The current schedule of closing costs which applies to the area in which you are buying or selling;

(b) Information concerning local custom and practices with respect to charging of closing costs which relate to either your sale or purchase and whether such costs are customarily paid by the seller or purchaser; and

(c) Information on the local terminology used to describe the costs specified in [paragraph \(b\)](#) of this section.

**§302-11.307 May I receive an advance of funds for my residence transaction expenses?**

No, you may not receive an advance of funds for your residence transaction expenses.

**§302-11.308 How much will I receive for reimbursement when I purchase or sell land in excess of what reasonably relates to the residence site?**

When you purchase or sell land in excess of what reasonably relates to the residence site, your reimbursement will be limited to a pro rata reimbursement of the land reasonably related to the residence site.

**§302-11.309 What residence transaction expense are reimbursable if an employee violates the terms of his/her service agreement?**

If the employee violates his/her service agreement, no residence transaction expenses will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are paid by the employee.

**Settlement of Unexpired Lease****§302-11.320 How must I request reimbursement for settlement of an unexpired lease?**

To request reimbursement for settlement of an unexpired lease, you must itemize expenses (list all expenses separately) on a travel voucher and submit the voucher to your agency.

**§302-11.321 How will I be reimbursed when I share a lease with someone else?**

When you share a lease with someone else you will be reimbursed on a pro rata basis for that portion of the lease that you are responsible for.

**Subpart E—Agency Responsibilities**

**Note to Subpart E:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-11.400 What policies and procedures must we establish?**

You must establish internal policies and procedures to implement this part.

**§302-11.401 Under what conditions may we authorize or approve a residence transaction expense allowance?**

You may authorize or approve a residence transaction expense allowance when an employee is performing a permanent change of station in the interest of the Government and has signed a service agreement (other than a new appointee or an employee assigned under the Government Employees Training Act (5 U.S.C. 4109.); and

(a) The old and new official stations are located in the United States; or

(b) The employee has completed an agreed upon tour of duty overseas and is returning to the United States to an official station that is at least 50 miles away from the employee's last official station in the United States; or

(c) When the employee has been permanently assigned to a temporary official station.

**§302-11.402 Who is not eligible to receive residence transaction expense allowances?**

The following are not eligible to receive residence transaction expense allowances:

(a) New appointees; and

(b) Employees assigned under the Government Employee's Training Act (5 U.S.C. 4109).

**§302-11.403 What policies must we establish before accepting documentation from an employee for reimbursement of residence transaction expenses?**

You must establish policies that will define what documentation is acceptable from an employee when requesting reimbursement of residence transaction expenses.

**§302-11.404 What controls must we establish for paying allowances for expenses incurred in connection with residence transactions?**

When paying allowances for expenses incurred in connection with residence transactions, you must:

(a) Determine who will authorize and approve residence transaction expenses on the employee's travel authorization;

(b) Determine who will review applications for reimbursement of residence transaction expenses;

(c) Determine who will authorize extensions beyond the 2-year limitation for completing sales and purchase or lease termination transactions, under §§302-11.420 and 302-11.421;

(d) Prescribe a claim application form which meets your internal administrative requirements;

(e) Require employees to submit a travel claim with appropriate documentation to support his/her payment of the expenses claimed, which must include as a minimum;

(1) The sales agreement,

(2) The purchase agreement,

(3) Property settlement documents,

(4) Loan closing statements, and

(5) Invoices or receipts for other bills paid; and

(f) Require employees to submit travel claims to his/her old official station for review and approval of the claim unless agency review and approval functions are performed elsewhere except as provided in §302-11.405.

**§302-11.405 Which agency must review and approve the employee's application when the employee transfers between agencies?**

The hiring agency in the locality of the employee's old official station must review and approve the employee's application when the employee transfers between agencies, unless the hiring agency does not have an appropriate installation there. In that case, the losing agency at the old official station must review and approve the expenses.

**§302-11.406 How must we administer an employee's claim?**

To administer an employee's claim:

(a) You must:

(1) Review the employee's claim to determine whether the expenses claimed are reasonable in amount and customarily paid by the buyer/seller in the locality where the property is located;

(2) Disallow any portion of the employee's claim that is inflated or are higher than normal for similar services in the locality;

(3) Execute final administrative approval of payment of a claim by an appropriate agency approving official; and

(4) Return disapproved applications to the employee with a memorandum of explanation.

(b) The approving official must determine if:

(1) The aggregate amount of expenses claimed in connection with a sale or purchase of a residence is within the prescribed limitation for either;

(2) All conditions and requirements under which allowances may be paid have been met; and

(3) The expenses themselves are those which are reimbursable.

**Note to §302-11.406:** You must not pay the expenses listed in [§302-11.202](#) or [§302-11.304](#).

#### **§302-11.407 What documentation must we require the employee to submit before paying residence transaction expenses?**

Before paying residence transaction expenses, you must require the employee to submit:

(a) A copy of his/her financial documents which prove that only the employee and or a member(s) of the immediate family made payments on the property;

(b) A copy of his/her financial documents which prove that he/she and/or a member(s) of the immediate family received all proceeds from the sale of the property;

(c) Documentation that is acceptable by you in verifying any interest that the employee has in the property; and

(d) Any additional documents that you need to verify payments.

#### **Time Limitations**

#### **§302-11.420 How long can we authorize an extension for completion of the sale and purchase or lease termination transactions?**

You may authorize an additional period of time, not to exceed 2 years, for completion of the sale and purchase or lease termination transactions.

#### **§302-11.421 What must we consider when authorizing an extension of time limitation?**

When authorizing an extension of time limitation, you must determine that the:

(a) Employee has extenuating circumstances which have prevented him/her from completing his/her sale and purchase or lease termination transactions in the initial authorized time frame of two years; and

(b) Employee's residence transactions are reasonably related to his/her transfer of official station.

#### **Unexpired Lease**

#### **§302-11.430 When must we reimburse an employee for expenses incurred due to settlement of an unexpired lease?**

You must reimburse an employee in lieu of residence transaction expenses when the employee meets the requirements of [§302-11.100](#) for expenses incurred due to settlement of an unexpired lease.

#### **§302-11.431 How must we require an employee to request reimbursement for expenses of an unexpired lease settlement?**

You must require that the employee submit an appropriate travel claim requesting reimbursement for expenses of an unexpired lease settlement with:

(a) An itemization of all expenses claimed supported by documentation showing that the employee indeed paid all lease settlement fees; and

(b) A total amount for all expenses claimed.

#### **Title Requirements**

#### **§302-11.440 How must we determine who holds title to property for reimbursement purposes?**

To determine who holds title to property for reimbursement purposes, you must verify:

(a) Whose name(s) actually appears on the title document (e.g., the deed); or

(b) Who holds equitable title interest in the property.

#### **§302-11.441 How must we determine if an employee holds equitable title interest in his/her property?**

To determine if an employee holds equitable title interest in his/her property, you must follow the guidelines in [§302-11.405](#).

#### **Request for Reimbursements**

#### **§302-11.450 May we advance an employee funds for expenses incurred in connection with residence transactions?**

No, you may not advance an employee funds for expenses incurred in connection with residence transactions.

#### **§302-11.451 What is the maximum amount that we may reimburse for the sale or purchase of an employee's residence?**

The maximum amount that you may reimburse for the sale or purchase of an employee's residence is:

- (a) Ten percent of the actual sale price for the sale of the employee's residence at the old official station; and
- (b) Five percent of the actual purchase price of the residence for the purchase of a residence at the new official station.

## PART 302-12—USE OF A RELOCATION SERVICES COMPANY

**Authority:** 5 U.S.C. 5738 and 20 U.S.C. 905(c).

### Subpart A—Employee's Use of a Relocation Services Company

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

#### §302-12.1 Am I eligible to use a relocation services company?

Yes, if you are an employee who is authorized to transfer and such transfer includes residence transaction.

#### §302-12.2 Who determines if I may use a relocation services company?

Your agency must determine if you may use a relocation services company.

#### §302-12.3 Under what conditions may I use a relocation services company?

You may use a relocation services company if you:

- (a) Meet all conditions required for you to be eligible for an allowance contained in this chapter for which a service provided by the relocation services company would serve as a substitute, and you are authorized to use a specific relocation service provided by the company as a substitute;
- (b) Have signed a service agreement; and
- (c) Meet any specific conditions your agency has established.

#### §302-12.4 For what relocation services expenses will my agency pay?

Your agency will pay the relocation services company's fees/expenses for the services you are authorized to use. If your agency pays the relocation services company for actual expenses the company incurs on your behalf, payment to the company is limited to what you would have received under the direct reimbursement provisions of this chapter.

#### §302-12.5 If I use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, will I be reimbursed for the relocation allowance as well?

No, if you use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, you will not be reimbursed for the relocation as well.

#### §302-12.6 What expenses will my agency pay if I use a relocation services company to ship household goods in excess of the maximum weight allowance?

If you use a relocation services company to ship HHG in excess of the maximum weight allowance, your agency will pay the portion of the fee attributable to 18,000 pounds net weight. You must pay the rest.

#### §302-12.7 What expenses will my agency pay if I use a relocation services company to sell or purchase a residence for which I and/or a member(s) of my immediate family do not have full title?

If you use a relocation services company to sell or purchase a residence for which you and or a member(s) of your immediate family do not have full title, your agency will pay the portion of the relocation services company's fee attributable to your pro rata share of the residence, in accordance with §302-11.103 of this chapter. You must pay any portion of the fee attributable to other than your pro rata share of the residence.

#### §302-12.8 If my agency authorizes me to enter a homesale program, must I accept a buyout offer from the relocation services company?

No, if your agency authorizes you to enter a homesale program, your agency must give you the option to accept or reject an offer from the relocation services company.

#### §302-12.9 What are the income tax consequences if I use a relocation services company?

You may incur income taxes on relocation services provided by a relocation services company and paid for by your agency. Section 82 of the Internal Revenue Code states there shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment. You will receive a relocation income tax (RIT) allowance if your agency determines that such expenses are taxable. The Government does not assume responsibility for payment of your taxes, however, and you may wish to consult a tax professional on income tax reporting.

### Subpart B—Agency's Use of a Relocation Services Company

**Note to Subpart B:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§302-12.100 What are “relocation services”?:**

“Relocation services” are services provided by a private company under a contract with an agency to assist a transferred employee in relocating to the new official station. Examples include homesale programs, home marketing assistance, home finding assistance, and property management services.

**§302-12.101 May we enter into a contract with a relocation services company for the company to provide relocation services?**

Yes, you may enter into a contract with a relocation services company for the company to provide relocation services.

**§302-12.102 What contracted relocation services may we provide at Government expense?**

You may pay for contracted relocation services that are substitutes for reimbursable relocation allowances authorized throughout this chapter. For example, you may pay for homesale services as a substitute for residence sale expenses, or household goods management services as a substitute for transportation of household goods.

**§302-12.103 May we separately contract for each type of relocation service?**

Yes, you may separately contract for each type of relocation service or you may combine several types of relocation services in a single contract.

**§302-12.104 What is the purpose of contracting for relocation services?**

The purpose of contracting for relocation services is to improve the treatment of employees who are directed to relocate to facilitate the retention of a well-qualified workforce.

**§302-12.105 How must we administer a relocation services contract?**

You must balance the positive effects that availability of relocation services has on employee mobility and morale with any increased costs your agency may experience as a result of providing relocation services.

**§302-12.106 What policies must we establish when offering our employees the services of a relocation services company?**

When offering your employees the services of a relocation services company, you must establish policies governing:

(a) The conditions under which you will authorize an employee to use a relocation services company;

(b) Which employees you will allow to use a relocation services company;

(c) What relocation services you will offer an employee; and

(d) Who will determine in each case if an employee may use a relocation services company and what services will be offered.

**§302-12.107 What rules must we follow when contracting for relocation services?**

You must follow the rules contained in the Federal Acquisition Regulations (FAR) (48 CFR) and/or other procurement regulations applicable to your agency.

**§302-12.108 What are the income tax consequences that we must consider when offering relocation services?**

Amounts you pay to a relocation services company on behalf of an employee may be taxable to the employee. In some cases, such as certain homesale programs, the amounts may not be taxable. You must determine the taxability of such payments, and pay a relocation income tax (RIT) allowance in accordance with [Part 302-17](#) of this chapter on payments you determine to be taxable to the employee. You may contact the: Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW, Room 5501, Washington, DC 20224, for information on the income tax consequences of payments you make to a relocation services company.

**§302-12.109 What must we consider in deciding whether to use the fixed-fee or cost-reimbursable contracting method?**

You must consider the following factors in deciding whether to use the fixed-fee or cost-reimbursable contracting method:

(a) *Risk of alternative methods.* Under a fixed fee contract, the relocation services company bears all risks not expressly contained in the contract. Under a cost-reimbursable contract, you must assume some or all risks and, therefore, must assume some management responsibilities under the contract as well. For example, under a fixed fee homesale program you are not directly liable for losses incurred if a residence does not sell immediately, while under a cost-reimbursable homesale program you assume some or all risks of selling the residence.

(b) *Cost of alternative methods.* Under the fixed fee method of contracting, the fee includes a cost component for risks assumed by the relocation services company. Under the cost-reimbursable method of contracting, you are directly responsible for some or all of the costs associated with management of the contract. In deciding whether to use cost-reimbursable contracting you, therefore, must consider the cost of resources you would require (including personnel costs) to manage a cost-reimbursable relocation services contract.

(c) *Effect on the obligation of funds.* You must obligate funds for a relocation in the fiscal year in which the purchase order is awarded under the contract. Under the fixed fee contracting method, the amount of the relocation services fee is fixed and you have a basis for determining the amount of funds to obligate. Under the cost-reimbursable contracting method, you must obligate funds based on an estimate of the costs that will be incurred. When opting for cost-reimbursable contracting you, therefore, should establish a reliable method of computing fund obligation estimates.

**§302-12.110 May we take title to an employee's residence?**

No, you may not take title to an employee's residence except as specifically provided by statute. The statutes which form the basis for the provisions of this part do not provide such authority.

**§302-12.111 Under a homesale program, may we establish a maximum home value above which we will not pay for homesale services?**

Yes, if a home exceeding the maximum value above which you will not pay is sold under your homesale program, the employee will be responsible for any additional costs. You must establish a maximum amount commensurate with your agency's experience. You may consider, among other factors, budgetary constraints, the value range of homes in areas

where you have offices, and the value range of homes previously entered in your program.

**§302-12.112 Under a homesale program, may we pay an employee for losses he/she incurs on the sale of a residence?**

No, under a home sale program, you may not pay an employee for losses he/she incurs on the sale of a residence, but this does not preclude you reimbursing a relocation service's company for losses incurred while the contractor holds the property.

**§302-12.113 Under a homesale program, may we direct the relocation services company to pay an employee more than the fair market value of his/her residence?**

No, under a homesale program, you may not direct the relocation services company to pay an employee more than the fair market value (as determined by the residence appraisal process) of his/her home.

**§302-12.114 May we use a relocation services contract for services which we are contractually bound to obtain under another travel services contract?**

No, you may not use a relocation services contract to which you are contractually bound to obtain the services of another relocation service provider or to circumvent the travel and transportation expense payment system contract if you are a user of that contract.

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**PART 302-13—[RESERVED]**

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## **PART 302-14—HOME MARKETING INCENTIVE PAYMENTS**

**Authority:** 5 U.S.C. 5756.

### **Subpart A—Payment of Incentive to the Employee**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

#### **§302-14.1 What is a “homesale program”?**

A “homesale program” is a program offered by an agency through a contractual arrangement with a relocation services company. The relocation services company purchases a transferred employee’s residence at fair market (appraised) value and then independently markets and sells the residence.

#### **§302-14.2 What is the purpose of a home marketing incentive payment?**

The purpose of a home marketing incentive payment is to reduce the Government’s relocation costs by encouraging transferred employees to participate in their employing agency’s homesale program to independently and aggressively market, and find a bona fide buyer for their residence. This significantly reduces the fees/expenses their agencies must pay to relocation services companies and effectively lowers the cost of such programs.

#### **§302-14.3 Am I eligible to receive a home marketing incentive payment?**

Yes, you are eligible to receive a home marketing incentive payment if you are an employee who is authorized to transfer and you otherwise meet requirements for sale of your residence at Government expense.

#### **§302-14.4 Must my agency pay me a home marketing incentive?**

No, your agency determines when it is in the Government’s interest to offer you a home marketing incentive.

#### **§302-14.5 Under what circumstances will I receive a home marketing incentive payment?**

You will receive a home marketing incentive payment when:

- (a) You enter your residence in your agency’s homesale program;
- (b) You independently and aggressively market your residence;
- (c) You find a bona fide buyer for your residence as a result of your independent marketing efforts;
- (d) You transfer the residence to the relocation services company;

(e) Your agency pays a reduced fee/expenses to the relocation services company as a result of your independent marketing efforts;

(f) You meet any additional conditions your agency has established, including but not limited to, mandatory marketing periods, list price guidelines, closing requirements, and residence value caps; and

(g) Your agency has established a home marketing incentive program.

#### **§302-14.6 How much may my agency pay me for a home marketing incentive?**

Your agency will determine the amount of your home marketing incentive payment. The incentive payment, however, may not exceed the lesser of:

- (a) Five percent of the price the relocation services company paid when it purchased the residence from you; or
- (b) The savings your agency realized from the reduced fee/expenses it paid as a result of you finding a bona fide buyer.

#### **§302-14.7 Are there tax consequences when I receive a home marketing incentive payment?**

Yes, the home marketing incentive payment is considered income. Consequently, you will be taxed, and your agency will withhold income and employment taxes, on the home marketing incentive payment. You will not, however, receive a withholding tax allowance (WTA) to offset the withholding on your home marketing incentive payment, nor will you receive a relocation income tax (RIT) allowance payment for substantially all of your Federal, state and local income taxes on the incentive payment.

## **Subpart B—Agency Responsibilities**

**Note to Subpart B:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

#### **§302-14.100 How should we administer our home marketing incentive payment program?**

Your goal in using an incentive payment program is to reduce your overall relocation costs. You must not make a home marketing incentive payment that exceeds the savings you realize from the reduced fees/expenses you pay the relocation services company.

#### **§302-14.101 What policies must we establish to govern our home marketing incentive payment program?**

You must establish policies to govern:

- (a) The conditions under which you will authorize a home marketing incentive payment for an employee;

(b) The amount of the home marketing incentive payment(s) you will offer (or) the method you will use to compute your home marketing incentive payments); and

(c) Who will determine in each case whether a home marketing incentive payment is authorized.

**§302-14.102 What factors should we consider in determining whether to establish a home marketing incentive payment program?**

In determining whether to establish a home marketing incentive payment program, you should consider:

(a) Whether the program will increase the percentage of residences sold for which employees find a bona fide buyer. You should establish a benchmark for the percentage of residences for which you expect employees to find a bona fide buyer resulting in lower homesale costs to you. If your historical percentage of employee-generated sales is below your benchmark, a home marketing incentive payment program may benefit you; and

(b) The expected net savings from a home marketing incentive payment program.

**§302-14.103 What factors should we consider in determining the amount of a home marketing incentive payment?**

In determining the amount of a home marketing incentive payment, you should consider the:

(a) Amount of savings from reduced fee/expenses paid to the relocation services company. The home marketing incentive payment program is intended to reduce your relocation costs. The amount of each home marketing incentive payment you make, therefore, must not exceed the savings you realize from the reduced fee you pay to the relocation services company; and

(b) Employee's efforts in marketing the residence. The purpose of a home marketing incentive payment program is to encourage a transferred employee who participates in a homesale program to independently and aggressively market his/her residence and find a bona fide buyer.

## PART 302-15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

### Subpart A—General Rules for the Employee

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee.

#### §302-15.1 What are property management services?

“Property management services” are programs provided by private companies for a fee, which help an employee to manage his/her residence at the old official station as a rental property. These services typically include, but are not limited to, obtaining a tenant, negotiating the lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting the rent, paying the mortgage and other carrying expenses from rental proceeds and/or funds of the employee, and accounting for the transactions and providing periodic reports to the employee.

#### §302-15.2 What are the purposes of the allowance for property management services?

The purpose of the allowance for property management services is reduce overall Government relocation costs when used instead of sale of the employee’s residence at Government expense. When authorized in connection with an employee’s transfer to a foreign area post of duty, relieve the employee of the costs of maintaining a home in the United States while stationed at a foreign area post of duty.

#### §302-15.3 Am I eligible for payment for property management services under this part?

Yes, you are eligible for payment for property management services when:

- (a) You transfer in the interest of the Government; and
- (b) You and/or a member(s) of your immediate family hold(s) title to a residence which you are eligible to sell at Government expense under [Part 302-11](#) or [Part 302-12](#) of this chapter.

#### §302-15.4 Who is not eligible for payment for property management services?

New appointees, employees assigned under the Government Employees Training Act (5 U.S.C. 4109), and employees transferring wholly outside the United States are not eligible for payment for property management services. However, relocations wholly outside the United States do not

affect previously authorized property management services as long as the employee continues to meet the requirements of [§302-15.6](#) and any other conditions established by the agency.

#### §302-15.5 Is my agency required to authorize payment for property management services?

No, your agency is not required to authorize payment for property management services. However, your agency determines:

- (a) When you meet the conditions set forth in [§302-15.3](#);
- (b) When to authorize payment for these services; and
- (c) What procedures you must follow when it authorizes such payment.

#### §302-15.6 Under what circumstances may my agency authorize payment under this part?

(a) For a relocation to an official station in the United States, your agency may authorize payment under this part when:

- (1) You are being returned from a foreign area post of duty to a different official station than the one from which you were transferred for your foreign tour of duty;
- (2) Your agency has determined that property management services is more advantageous and cost effective for the Government than having to sell your residence;
- (3) You have signed a service agreements; and
- (4) You meet any additional conditions that your agency has established.

(b) For relocations to official stations outside the United States, your agency will authorize payment under this part when you meet conditions set forth in [paragraphs \(a\)\(3\)](#) and [\(a\)\(4\)](#) of this section.

#### §302-15.7 For what property may my agency authorize payment under this part?

Under this part, payment may be authorized only for your residence at the last official station in the United States from which you transferred.

#### §302-15.8 When my agency authorizes payment for me under this part, am I obligated to use such services, or may I elect instead to sell my residence at Government expense?

You are not obligated to use your authorized property management services allowance. You have the option of choosing to sell your residence at Government expense or to use the property management services allowance.

**§302-15.9 Must I repay property management expenses my agency paid under this part if I elect to sell my former residence in the United States at Government expense when I am transferred from my current foreign post of duty to an official station in the United States other than the one I left?**

No, you are not required to repay any property management expenses paid by your agency if you elect to sell your former residence in the United States when transferred from your post of duty to an official station in the United States. The authority for your agency to pay for property management services under this part when you are transferred to a foreign post of duty arises from your transfer to the foreign post of duty. It is separate from, and in addition to, the authority to sell your residence at Government expense when you are transferred to an official station in the United States other than the official station from which you were transferred to the foreign post of duty.

**§302-15.10 How long may my agency pay under this part?**

Your agency may pay:

(a) For transfers within the United States for a period not to exceed 2 years from your effective date of transfer, with up to a 2-year extension, under the same conditions required in [§302-11.21](#) of this chapter; or

(b) From the time you transfer to a foreign area post of duty until you:

(1) Transfer back to an official station in the United States; or

(2) Complete a service agreement at your post of duty and remain there, but do not sign a new service agreement; or

(3) Separate from Government service.

**§302-15.11 If my agency authorized, and I elected to receive, payment for property management expenses, may I later elect to sell my residence at Government expense?**

Yes, you may change your selection from receiving property management expenses to selling your residence at Government expense provided:

(a) Your agency allows you to change your election of payment from property management expenses to the sale of your residence at Government expense; and

(b) Payment for sale of your residence at Government expense is offset in accordance with your agency's policy established under [§302-15.70\(d\)](#).

**§302-15.12 If my agency is paying for property management services under this part, and my service agreement expires, what must I do to ensure that payment for property management services continues?**

You must sign a new service agreement (see [§302-2.13](#) of this chapter) to continue to this benefit.

**§302-15.13 What are the income tax consequences when my agency pays for my property management services?**

When your agency pays for your property management services, you will be taxed on the amount of expenses your agency pays for property management services whether it reimburses you directly or whether it pays a relocation service company to manage your residence. Your agency must pay you a relocation income tax (RIT) allowance for the additional Federal, State and local income taxes you incur on property management expenses it reimburses you or pays on your behalf.

**Note to §302-5.13:** You may wish to consult with a tax advisor to determine whether you will incur any additional tax liability, unrelated to your agency's payment of your property management expenses, as a result of maintaining your residence as a rental property.

## **Subpart B—Agency Responsibilities**

**Note to Subpart B:** Use of pronouns "we", "you", and their variants throughout this subpart refers to the agency.

**§302-15.70 What governing policies must we establish for the allowance for property management services?**

You must establish policies and procedures governing:

(a) When you will authorize payment for property management services for an employee who transfers in the interest of the Government;

(b) Who will determine, for relocations to official stations in the United States, whether payment for property management services is more advantageous and cost effective than sale of an employee's residence at Government expense;

(c) If and when you will allow an employee who was offered and accepted payment for property management services to change his/her mind and elect instead to sell his/her residence at Government expense in accordance with [paragraph \(d\)](#) of this section; and

(d) How you will offset expenses you have paid for property management services against payable expenses for sale of the employee's residence when an eligible employee who elected payment for property management services later changes his/her mind and elects instead to sell his/her residence at Government expense.

## **SUBCHAPTER F—MISCELLANEOUS ALLOWANCES**

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## **PART 302-16—ALLOWANCE FOR MISCELLANEOUS EXPENSES**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

### **Subpart A—General**

**Note to Subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

#### **§302-16.1 What are miscellaneous expenses?**

- (a) Miscellaneous expenses are costs associated with:
  - (1) Discontinuing your residence at your old official station, and/or
  - (2) Establishing a residence at your new official station.
- (b) Expenses allowable under [paragraph \(a\)\(1\) or \(a\)\(2\)](#) of this section include, but are not limited to the following:

<b>General Expenses</b>	<b>Fees/Deposits</b>	<b>Losses</b>
Appliances	For disconnecting/ connecting appliances, equipment, utilities (except for mobile homes see <a href="#">§302-10.200</a> ), conversion of appliances for operation on available utilities.	
Rugs, draperies, and curtains	For cutting and fitting such items, moved from one residence quarters to another.	
Utilities (See <a href="#">§302-10.200</a> for mobile homes)	Deposits or fees not offset by eventual refunds.	
Medical, dental, and food locker contracts		Forfeiture losses not transferable or refundable.
Private Institutional care contracts (such as that provided for handicapped or invalid dependents only)		Forfeiture losses not transferable or refundable.

<b>General Expenses</b>	<b>Fees/Deposits</b>	<b>Losses</b>
Privately-owned automobiles	Registration, Driver's license, and use taxes imposed when bringing into certain jurisdictions.	
Transportations of pets	Only costs associated with dogs, cats and other house pets are included. Other animals (horses, fish, birds, various rodents, etc.) are excluded because of their size, exotic nature, or restrictions on shipping, host country restrictions and special handling difficulties. Costs are limited to transportation and handling costs, required to meet the more stringent rules of air carriers, not included are inoculations, examinations, boarding quarantine or other costs in the moving process.	

#### **§302-16.2 What is the purpose of the miscellaneous expenses allowance (MEA)?**

The miscellaneous expenses allowance (MEA) is to help defray some of the costs incurred due to relocating. The MEA is related to expenses that are common to living quarters, furnishings, household appliances, and to other general types of costs inherent in relocation of a place of residence. (See [Part 302-10](#) of this chapter for specific costs normally associated with relocation of a mobile home dwelling that are covered under transportation expenses.)

#### **§302-16.3 Who is and is not eligible for a MEA?**

See the following table for eligibility of MEA:

<b>Employees Eligible for MEA</b>	<b>Employees Not Eligible for MEA</b>
<ul style="list-style-type: none"> <li>(a) Your agency authorized/ approved a relocation or a TCS; and</li> <li>(b) You discontinued and established a residence in connection with your relocation or TCS; and</li> <li>(c) You meet the applicable eligibility conditions in <a href="#">Part 302-1</a> of this chapter; and</li> <li>(d) You signed the requirement in <a href="#">Part 302-1</a> of this chapter.</li> </ul>	<ul style="list-style-type: none"> <li>(a) A new appointee,</li> <li>(b) Authorized SES “last move home” benefits,</li> <li>(c) Assigned under the Government Employees Training Act (5 U.S.C. 4109), or</li> <li>(d) Returning from an overseas assignment for separation from Government service.</li> </ul>

## §302-16.4

## FEDERAL TRAVEL REGULATION

### §302-16.4 Must my agency authorize payment of a MEA?

Yes, if you meet the applicable eligibility conditions in §302-16.3, your agency must authorize payment of a MEA.

## Subpart B—Employee’s Allowance for Miscellaneous Expenses

### §302-16.100 How will I receive the MEA?

You will be reimbursed your MEA in accordance with your agency’s internal travel policy.

### §302-16.101 May I receive an advance of funds for MEA?

No, your agency must not authorize an advance of funds for MEA.

### §302-16.102 What amount may my agency reimburse me for miscellaneous expenses?

The following amounts will be paid for miscellaneous expenses without support or documentation of expenses:

- (a) Either \$650 or the equivalent of one week’s basic gross pay, whichever is the lesser amount, if you have no immediate family relocating with you; or
- (b) \$1,300 or the equivalent of two weeks’ basic gross pay, whichever is the lesser amount, if you have immediate family members relocating with you.

### §302-16.103 May I claim an amount in excess of that prescribed §302-16.102?

Yes, you may claim an amount in excess of that prescribed in §302-16.102 if authorized by your agency; and

- (a) Supported by acceptable statements of fact, paid bills or other acceptable evidence justifying the amounts claimed; and
- (b) The aggregate amount does not exceed your basic gross pay (at the time you reported for duty, at your new official station) for:
  - (1) One week if you are relocating without an immediate family; or
  - (2) Two weeks if you are relocating with an immediate family.

**Note to §302-16.103:** The amount authorized cannot exceed the maximum rate of grade GS-13 provided in 5 U.S.C. 5332 at the time you reported for duty at your new official station.

### §302-16.104 Must I document my miscellaneous expenses to receive reimbursement?

You must show documentation of your miscellaneous expenses only when an amount exceeds that prescribed in §302-16.102.

### §302-16.105 What standard of care must I use in incurring miscellaneous expenses?

You must exercise the same care in incurring expenses that a prudent person would exercise if relocating at personal expense.

## Subpart C—Agency Responsibilities

**Note to Subpart C:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

### §302-16.200 What governing policies must we establish for MEA?

For MEAs, you must establish policies and procedures governing:

- (a) Who will determine whether payment for an amount in excess of the flat MEA is appropriate; and
- (b) How you will pay a MEA in accordance with §§302-16.3 and 302-16.4.

### §302-16.201 How should we administer the authorization and payment of miscellaneous expenses?

You should limit payment of miscellaneous expenses to only those expenses that are necessary.

### §302-16.202 Are there any restrictions to the types of costs we may cover?

Yes, a MEA cannot be used to reimburse:

- (a) Costs or expenses incurred which exceed maximums provided by statute or in this subtitle;
- (b) Costs or expenses incurred but which are disallowed elsewhere in this subtitle;
- (c) Costs reimbursed under other provisions of law or regulations;
- (d) Costs or expenses incurred for reasons of personal taste or preference and not required because of the move;
- (e) Losses covered by insurance;
- (f) Fines or other penalties imposed upon the employee or members of his/her immediate family;
- (g) Judgements, court costs, and similar expenses growing out of civil actions; or
- (h) Any other expenses brought about by circumstances, factors, or actions in which the move to a new duty station was not the proximate cause.

### §302-16.203 What are examples of types of costs not covered by the MEA?

Examples of costs which are not reimbursable from this allowance are:

- (a) Losses in selling or buying real and personal property and cost related to such transactions;

- (b) Cost of additional insurance on household goods while in transit to the new official station or cost of loss or damage to such property;
- (c) Additional costs of moving household goods caused by exceeding the maximum weight limitation;
- (d) Costs of newly acquired items, such as the purchase or installation cost of new rugs or draperies;
- (e) Higher income, real estate, sales, or other taxes as the result of establishing residence in the new locality;
- (f) Fines imposed for traffic infractions while en route to the new official station locality;
- (g) Accident insurance premiums or liability costs incurred in connection with travel to the new official station locality, or any other liability imposed upon the employee for uninsured damages caused by accidents for which he/she or a member of his/her immediate family is held responsible;
- (h) Losses as the result of sale or disposal of items of personal property not considered convenient or practicable to move;
- (i) Damage or loss of clothing, luggage, or other personal effects while traveling to the new official station locality;
- (j) Subsistence, transportation, or mileage expenses in excess of the amounts reimbursed as per diem or other allowances under this regulation;
- (k) Medical expenses due to illness or injuries while en route to the new official station or while living in temporary quarters at Government expense under the provisions of this chapter; or
- (l) Costs incurred in connections with structural alterations (remodeling or modernizing of living quarters, garages or other buildings to accommodate privately-owned automobiles, appliances or equipment; or the cost of replacing or repairing worn-out or defective appliances, or equipment shipped to the new location).

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**PART 302-17—RELOCATION INCOME TAX (RIT) ALLOWANCE**

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

**§302-17.1 Authority.**

Payment of a relocation income tax (RIT) allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee, or by the employee and spouse if a joint tax return is filed, as a result of certain travel and transportation expense and relocation allowances which are furnished in kind, or for which reimbursement or an allowance is provided by the Government. Payment of the RIT allowance also is authorized for income taxes paid to the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. possessions in accordance with a decision of the Comptroller General of the United States (67 Comp. Gen. 135 (1987)). The RIT allowance shall be calculated and paid as provided in this part.

**§302-17.2 Coverage.**

(a) *Eligible employees.* Payment of a RIT allowance is authorized for employees transferred on or after November 14, 1983, in the interest of the Government from one official station to another for permanent duty. The effective date of an employee's transfer is the date the employee reports for duty at the new official station as provided in [Part 300-3](#) of this title.

(b) *Individuals not covered.* The provisions of this part are not applicable to the following individuals or employees:

- (1) New appointees;
- (2) Employees assigned under the Government Employees Training Act (see 5 U.S.C. 4109); or
- (3) Employees returning from overseas assignments for the purpose of separation.

**§302-17.3 Types of moving expenses or allowances covered and general limitations.**

The RIT allowance is limited by law as to the types of moving expenses that can be covered. The law authorizes reimbursement of additional income taxes resulting from certain moving expenses furnished in kind or for which reimbursement or an allowance is provided to the transferred employee by the Government. However, such moving expenses are covered by the RIT allowance only to the extent that they are actually paid or incurred, and are not allowable as a moving expense deduction for tax purposes. The types of expenses or allowances listed in [paragraphs \(a\)](#) through [\(i\)](#) of this section, are covered by the RIT allowance within the limitations discussed.

(a) *En route travel.* Travel (including per diem) and transportation expenses of the transferred employee and immediate family for en route travel from the old official station to the new official station. (See [Part 302-4](#) of this chapter.)

(b) *Household goods shipment.* Transportation (including temporary storage) expenses for movement of household goods from the old official station to the new official station. (See [Part 302-7](#) of this chapter.)

(c) *Extended storage expenses.* Allowable expenses for extended storage of household goods belonging to an employee transferred on or after November 14, 1983, through October 11, 1984, to an isolated location in the continental United States. (See [Part 302-8](#), of this chapter extended storage expenses are not covered by the RIT allowance for transfers on or after October 12, 1984). (See [§302-17.4\(c\)](#) of this chapter.)

(d) *Mobile home movement.* Expenses for the movement of a mobile home for use as a residence when movement is authorized instead of shipment and temporary storage of household goods. (See [Part 302-10](#) of this chapter.)

(e) *Househunting trip.* Travel (including per diem) and transportation expenses of the employee and spouse for one round trip to the new official station to seek permanent residence quarters. (See [Part 302-5](#) of this chapter.)

(f) *Temporary quarters.* Subsistence expenses of the employee and immediate family during occupancy of temporary quarters. (See [Part 302-6](#) of this chapter.)

(g) *Real estate expenses.* Allowable expenses for the sale of the residence (or expenses of settlement of an unexpired lease) at the old official station and for purchase of a home at the new official station for which reimbursement is received by the employee. (See [Part 302-11](#) of this chapter.)

(h) *Miscellaneous expense allowance.* A miscellaneous expense allowance for the purpose of defraying certain expenses associated with discontinuing a residence at one location and establishing a residence at the new location in connection with an authorized or approved permanent change of station. (See [Part 302-16](#) of this chapter.)

(i) *Relocation services.* Payments, or portions thereof, made to a location service company for services provided to a transferred employee (see [Part 302-12](#) of this chapter), subject to the conditions stated in this paragraph and within the general limitations of this section applicable to other covered expenses.

(1) *For employees transferred on or after November 14, 1983, through October 11, 1984.* The amount of a broker's fee or real estate commission, or other real estate sales transaction expenses which normally are reimbursable to the employee under [§302-11.200](#) of this chapter, but have been paid by a relocation service company incident to an assigned sale from the employee, provided that such payments constitute income to the employee. For the purposes of this regulation, an assigned sale occurs when an employee obtains a binding

agreement for the sale of his/her residence and assigns the inherent rights and obligations of that agreement to a relocation company that is providing services under contract with the employing agency. For example, if the employee incurs an obligation to pay a specified broker's fee or real estate commission under the terms of the sales agreement, this obligation along with the sales agreement is assigned to the relocation company and may, upon payment of the obligation by the relocation company, constitute income to the employee. (See §302-12.7 of this chapter entitled "Income tax consequences of using relocation companies.")

(2) *For employees transferred on or after October 12, 1984.* Expenses paid by a relocation company providing relocation services to the transferred employee pursuant to a contract with the employing agency to the extent such payments constitute income to the employee. (See §302-12.7 of this chapter.)

**Note:** See reference shown in parentheses for reimbursement provisions for each allowance listed in paragraphs (a) through (i) of this section. See section 217 of the Internal Revenue Code (IRC) and Internal Revenue Service (IRS) Publication 521 entitled "Moving Expenses" and appropriate State and local tax authority publications for additional information on the taxability of moving expense reimbursements and the allowable tax deductions for moving expenses.

#### §302-17.4 Exclusions from coverage.

The provisions of this part are not applicable to the following:

(a) Any tax liability that may result from payments by the Government to relocation companies on behalf of employees transferred on or after November 14, 1983, through October 11, 1984, other than the payments for those expenses specified in §302-17.3(i)(1).

(b) Any tax liability incurred for local income taxes other than city income tax as a result of moving expense reimbursements for employees transferred on or after November 14, 1983, through October 11, 1984. (See definition in §302-17.5(b).)

(c) Any tax liability resulting from reimbursed expenses for any extended storage of household goods except as specifically provided for in §302-17.3(c).

(d) Any tax liability resulting from paid or reimbursed expenses for shipment of a privately owned automobile.

(e) Any tax liability resulting from an excess of reimbursed amounts over the actual expense paid or incurred. For instance, if an employee's reimbursement for the movement of household goods is based on the commuted rate schedule and his/her actual moving expenses are less than the reimbursement, the tax liability resulting from the difference is not covered by the RIT allowance. (See §302-17.8(c)(2)(i).)

(f) Any tax liability resulting from an employee's decision not to deduct moving expenses for which a tax deduction is allowable under the Internal Revenue Code or appropriate State and local tax codes. (See §302-17.8(b)(1) and §302-17.8(c)(2).)

(g) Any tax liability resulting from the payment of recruitment, retention, or relocation bonuses authorized by the Office of Personnel Management pursuant to 5 U.S.C. 5753 and 5754, or any other provisions which allow relocation payments that are not reimbursements for travel, transportation, and other expenses incurred in relocation.

#### §302-17.5 Definitions and discussion of terms.

For purposes of this part, the following definitions will apply:

(a) *State income tax.* A tax, imposed by a State tax authority, that is deductible for Federal income tax purposes as a State income tax under section 164(a)(3) of the IRC. "State" means any one of the several States of the United States and the District of Columbia.

(b) *Local income tax.* A tax, imposed by a recognized city or county tax authority, that is deductible for Federal income tax purposes as a local (city or county) income tax under section 164(a)(3) of the IRC; except, that for employees transferred on or after November 14, 1983, through October 11, 1984, local income tax shall be construed to mean only city income tax. For purposes of this regulation:

(1) "City" means any unit of general local government which is classified as a municipality by the Bureau of the Census, or which is a town or township that in the determination of the Secretary of the Treasury possesses powers and performs functions comparable to those associated with municipalities, is closely settled, and contains within its boundaries no incorporated places as defined by the Bureau of the Census (31 CFR 215.2(b)(1)).

(2) "County" means any unit of local general government which is classified as a county by the Bureau of the Census (31 CFR 215.2(e)).

(c) *Covered moving expense reimbursements or covered reimbursements.* As used herein, these terms include those moving expenses listed in §302-17.3 as being covered by the RIT allowance and which may be furnished in kind, or for which reimbursement or an allowance is provided by the Government.

(d) *Covered taxable reimbursements.* Covered moving expense reimbursements minus the tax deductions allowable under the IRC and IRS regulations for moving expenses. (See determination in §302-17.8(c).)

(e) *Year 1 or reimbursement year.* The calendar year in which reimbursement or payment for moving expenses is made to, or for, the employee under the provisions of this part. All or part of these reimbursements (see §302-17.6) are reported to the IRS as income (wages, salary, or other com-

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pension) to the employee for that tax year under the provisions of the IRC and IRS regulations, and are subject to Federal tax withholding. The withholding tax allowance (WTA) (see [paragraph \(f\)\(1\)](#) of this section) is calculated in Year 1, to cover the employee's Federal tax withholding obligations each time covered moving expense reimbursements are made that result in a Federal tax withholding obligation. For purposes of this part, an advance of funds for any of the covered moving expenses is not considered to be a reimbursement or a payment until the travel voucher settlement for such expenses takes place. If an employee's reimbursement for moving expenses is spread over more than one year, he/she will have more than one Year 1.

(f) *Year 2.* The calendar year in which a claim for the RIT allowance is paid.

(1) Generally, Year 2 will be the calendar year immediately following Year 1 and in which the employee files a tax return reflecting his/her tax liability for income received in Year 1. However, there may be instances where the employee's claims submission and/or payment of the RIT allowance is delayed beyond the calendar year immediately following Year 1. (Year 1 will always be the calendar year that reimbursements are received; see [paragraph \(e\)](#) of this section.) Year 2 will be the calendar year in which the RIT allowance is actually paid.

(2) The RIT allowance is calculated in Year 2 and paid to cover the additional tax liability (resulting from moving expense reimbursements received in Year 1) not covered by the WTA paid in Year 1. If an employee's covered taxable reimbursements are spread over more than one year, he/she will have more than one Year 2.

(g) *Federal withholding tax rate (FWTR).* The tax rate applied to incremental income to determine the amount to be withheld for Federal income tax from salary or other compensation such as moving expense reimbursements. Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to such reimbursements. (See [§302-17.7\(c\)](#).) Agencies should refer to the Treasury Financial Manual, TFM 3-5000, and applicable IRS regulations for complete and up-to-date information on this subject.

(h) *Earned income.* For purposes of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA (see [paragraph \(n\)](#) of this section) and any RIT allowance (see [paragraph \(m\)](#) of this section) paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W-2 for the employee (employee and spouse, if filing jointly), and if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040. Earned

income may be from more than one source. (See [§302-17.8\(d\)](#).)

(i) *Marginal tax rate (MTR).* The tax rate (for example, 33 percent) applicable to a specific increment of income. The Federal, Puerto Rico, and State marginal tax rates to be used in calculating the RIT allowance are located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) (see [§302-17.14](#)). (See [§302-17.8\(e\)\(3\)](#) of this part for instructions on local marginal tax rate determinations.)

(j) *Combined marginal tax rate (CMTR).* A single rate determined by combining the applicable marginal tax rates for Federal (or Puerto Rico, when applicable), State, and local income taxes, using formulas provided in [§302-17.8\(e\)\(5\)](#).

(k) *Gross-up.* Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in [§302-17.3](#).

(l) *Gross-up formulas.* The formulas used to determine the amount of the gross-up for the WTA and the RIT allowance. The gross-up formulas used herein compensate the employee for the initial tax, the tax on tax, etc. Note that the WTA gross-up formula in [§302-17.7\(d\)](#) is different than the RIT gross-up formula prescribed in [§302-17.8\(f\)](#).

(m) *RIT allowance.* The amount of payment computed and paid in Year 2 to cover substantially all of the estimated additional tax liability incurred as a result of the covered moving expense reimbursements received in Year 1.

(n) *Withholding tax allowance (WTA).* The withholding tax allowance (WTA), paid in Year 1, covers the employee's Federal income tax withholding liability on covered taxable reimbursements received in Year 1. The amount is computed by applying the withholding gross-up formula prescribed in [§302-17.7\(d\)](#) (using the Federal withholding tax rate) each time that a Federal withholding obligation is incurred on covered moving expense reimbursements received in Year 1. Grossing-up the Federal withholding amount protects the employee from using part of his/her moving expense reimbursement to pay Federal withholding taxes. (See [§302-17.7](#).)

(o) *State gross-up.* Payment for the estimated additional State income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in [§302-17.3](#) that are deductible for Federal income tax but not for State income tax purposes.

(p) *State gross-up formula.* The formula prescribed in [§302-17.8\(f\)\(3\)](#) to be used in determining the amount to be included in the RIT allowance to compensate an employee for the additional State income tax incurred in States that do not allow the deduction of moving expenses.

**§302-17.6 Procedures in general.**

(a) This regulation sets forth procedures for the computation and payment of the RIT allowance and defines agency and employee responsibilities. This part does not require

changes to those internal fiscal procedures established by the individual agencies pursuant to IRS regulations, or the Treasury Financial Manual, provided that the intent of the statute authorizing the RIT allowance and this part are not disturbed.

(b) The total amount reimbursed or paid to the employee, or on his/her behalf, for travel, transportation, and other relocation expenses and allowances is includable in the employee's gross income pursuant to the IRC and certain State or local government tax codes. Some moving expenses for which reimbursements are received may be deducted from income by the employee as moving expense deductions, subject to certain limitations prescribed by the IRS or pertinent State or local tax authorities. Reimbursements for nondeductible moving expenses are subject to income tax. (See IRS Publication 521 entitled "Moving Expenses" and the appropriate State and local tax codes for detailed information.)

(c) Usually, if the employee is reimbursed for nondeductible moving expenses, the amount of these reimbursements is subject to withholding of Federal income tax in accordance with IRS regulations at the time of reimbursement. Under existing fiscal procedures, the amount of the employee's withholding obligation is usually deducted either from reimbursements for the moving expenses at the time of reimbursement or from the employee's salary. (See Treasury Financial Manual.)

(d) Payment of a WTA established herein will offset deductions for the Federal income tax withholding on moving expense reimbursements, and on the WTA itself, from the employee's moving expense reimbursements or from salary.

(e) The total amount of the RIT allowance can be computed after the end of Year 1 as soon as the earned income level, income tax filing status, total covered taxable reimbursements, and the applicable marginal tax rates can be determined. Employee claims for the RIT allowance should be submitted in accordance with this part and the employing agency's procedures.

(f) Procedures are prescribed in §§302-17.7 and 302-17.8 for computation and payment of the WTA and the RIT allowance. These procedures are built on existing fiscal procedures and IRS regulations regarding reporting of employee income from reimbursements and withholding of taxes on supplemental wages.

## **§302-17.7 Procedures for determining the WTA in Year 1.**

(a) *General rules.* The WTA is designed to cover only the employee's withholding tax obligation for Federal income taxes on income resulting from covered moving expense reimbursements. (See definition in §302-17.5(c).) Other withholding tax obligations, if any, such as for social security taxes or for State and/or local income taxes on income result-

ing from moving expense reimbursements shall not be included in the calculation of the WTA payment. The amount of the WTA is equal to the Federal income tax withholding obligation incurred by the employee on covered moving expense reimbursements (which are not offset by deductible moving expenses) and on the WTA itself. Each time covered moving expense reimbursements are paid to or on behalf of the employee, the WTA shall be calculated, accounted for, and reported as provided in [paragraphs \(b\)](#) through [\(g\)](#) of this section.

(b) *Determination of amount of reimbursement subject to withholding.* Under IRS regulations, income resulting from reimbursements for nondeductible moving expenses is subject to withholding of Federal income taxes. (See IRS Publication 521, "Moving Expenses.") There are some moving expenses which may be reimbursed but are not covered taxable reimbursements (see definition in [§302-17.5\(d\)](#)) for purposes of the WTA and RIT allowance calculations, such as extended storage of household goods. (See exclusions in [§302-17.4](#).) Therefore, the actual amount of the covered taxable reimbursements may be different than the amount of nondeductible moving expenses subject to Federal income tax withholding. The difference in these amounts should not be substantial; therefore, the amount of nondeductible moving expenses subject to Federal income tax withholding, as determined by the agency pursuant to IRS regulations, may be used in calculating the WTA. (Note that the RIT calculation procedure in [§302-17.8](#) requires determination of covered taxable reimbursements.)

(c) *Determination of Federal withholding tax rate (FWTR).* Moving expense reimbursements constitute supplemental wages for Federal income tax purposes. Therefore, an agency must withhold at the withholding rate applicable to supplemental wages. Currently, the supplemental wages withholding rate is 28 percent. The supplemental wages withholding rate should be used in calculating the WTA unless under an agency's withholding procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the supplemental wages withholding rate in the calculation shown in [paragraph \(d\)](#) of this section.

(d) *Calculation of the WTA.* The WTA is calculated by substituting the amounts determined in [paragraphs \(b\)](#) and [\(c\)](#) of this section into the following WTA gross-up formula:

Formula:

$$Y = \frac{X}{1-X}(N)$$

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Where:

Y = WTA

X = FWTR (generally, 28 percent)

N = nondeductible moving expenses/covered taxable reimbursements

Example:

If:

X = 28 percent

N = \$20,000

Then:

$$Y = \frac{.28}{1.00 - .28} (\$20,000)$$

Y = .3889 (\$20,000)

Y = \$7778.00

(e) *WTA payment and employee agreement for repayment.* (1) The WTA may be calculated several times within Year 1 if reimbursements for moving expenses are made on more than one travel voucher. Each time an employee is reimbursed for moving expenses which are subject to Federal tax withholding in accordance with the IRS regulations, the WTA will be calculated and paid unless the employee fails to comply with the requirements in [paragraph \(e\)\(2\)](#) of this section.

(2) The employee shall be required to agree in writing to repay any excess amount paid to him/her in Year 1 (see [§302-17.8\(f\)\(5\)](#) and [§302-17.9\(b\)\(3\)](#)), and submit the required certified tax information and claim for his/her RIT allowance within a reasonable length of time (as determined by the agency) after the close of Year 1. Failure of the employee to comply with this requirement will preclude the agency's payment of the WTA. The entire WTA will be considered an excess payment if the RIT allowance claim is not submitted in a timely manner to settle the RIT allowance account.

(f) *Determination of employee's withholding tax on WTA.* Since the amount of the WTA is considered income to the employee, it is subject to the same tax withholding requirements as all other moving expense reimbursements. (See Treasury Financial Manual, Section 4080, Moving Expense Reimbursements, for withholding requirements.)

(g) *End of year reporting.* At the end of the year, agencies generally are required to issue IRS Form(s) W-2 for each employee showing total gross compensation (including moving expense reimbursements) and the applicable amount of Federal taxes withheld. For tax reporting purposes, the WTA is to be treated as a moving expense reimbursement. The total amount of the employee's WTA's paid during the year as well as the amount of moving expense reimbursements should be included as income on the employee's Form W-2. The Federal tax withholding amount applicable to the moving expense reimbursements and the WTA should also be included on the employee's Form W-2. The amount of the

WTA's also will be furnished to the employee along with the amount of moving expense reimbursements on IRS Form 4782 or another itemized listing provided for the employee's use in preparing his/her tax return (see IRS regulations for further guidance) and in claiming the RIT allowance as provided in [§302-17.8](#).

**§302-17.8 Rules and procedures for determining the RIT allowance in Year 2.**

(a) *Summary/overview of procedures.* The RIT allowance will be calculated and claimed in Year 2. This can be accomplished as soon as the employee can determine earned income (as defined herein), income tax filing status, covered taxable reimbursements for Year 1, and the applicable marginal tax rates. The RIT allowance is then calculated using the gross-up formula under procedures prescribed herein. Since the RIT allowance is considered income, appropriate withholding taxes on the RIT allowance are deducted and the balance constitutes the net payment to the employee. Rules, procedures, and the prescribed tax tables for these calculations are provided in [paragraphs \(b\)](#) through [\(g\)](#) of this section, and in an annual Federal Travel Regulation (FTR) Bulletin (located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin)).

(b) *General rules and assumptions.* (1) The procedures prescribed herein for calculations and payment of the RIT allowance are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS. This approach avoids a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment. Specifically, the following assumptions have been made:

(i) The employee will claim allowable moving expense deductions for the same tax year in which the corresponding moving expense reimbursements are included in income;

(ii) Changes to the IRC, applicable to the 1987 and subsequent tax years, require that allowable moving expense deductions must be taken as an itemized deduction from gross income rather than as an adjustment to gross income as in previous tax years. It is assumed that employees will receive the benefit of allowable moving expense deductions to offset income either by itemizing their moving expense deductions or through the increased standard deductions.

(iii) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1 (and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform Act of 1986 substantially changed the Federal tax structure making it necessary to compute a separate CMTR

for Year 1 and for Year 2. (See [paragraph \(e\)](#) of this section.) The formula for calculating the RIT allowance to be paid in 1988 and subsequent years is shown in [paragraph \(f\)](#) of this section. It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for Year 2.

(2) The prescribed procedures, which yield an estimate of an employee's additional tax liability due to moving expense reimbursements, are to be used uniformly. They are not to be adjusted to accommodate an employee's unique circumstance which may differ from the assumed circumstances stated in [paragraph \(b\)\(1\)](#) of this section.

(3) An adjustment of the RIT allowance paid in Year 2 for the covered taxable reimbursements received in Year 1 is required if the tax information certified to on the RIT allowance claim is different than that shown on the actual Federal tax return filed with IRS for Year 1 or changed for any reason after filing of the tax return, so as to affect the CMTR's used in the RIT allowance calculation. (See [§302-17.10](#) for claims procedures.)

*(c) Determination of covered taxable reimbursements.*

(1) Generally, the amount of the covered taxable reimbursements is the difference between (i) the amount of covered moving expense reimbursements for the allowances listed in [§302-17.3](#) that was included in the employee's income in Year 1, and (ii) the maximum amount of allowable moving expenses that may be claimed as a moving expense deduction by the employee on his/her Federal tax return under IRS tax regulations to offset the income resulting from moving expense reimbursements for Year 1. The covered taxable reimbursements will be determined as if the employee had itemized and deducted all allowable moving expense deductions. (See assumption made in [paragraph \(b\)\(1\)\(ii\)](#) of this section.) If the employee is precluded from claiming moving expense deductions because he/she does not meet IRS requirements for the distance test, then the amount of covered taxable reimbursements is the same as the amount of covered moving expense reimbursements. (See [§302-17.5\(d\)](#).)

(2) For purposes of calculating the RIT allowance, the following special rules apply to the determination of moving expense deductions to offset moving expense reimbursements reported as income:

(i) The total amount of reimbursement (which was reported as income) for the expenses of en route travel for the employee and family (see [§302-17.3\(a\)](#)) and transportation (including up to 30 days temporary storage) of household goods (see [§302-17.3\(b\)](#)) to the new official station shall be used as a moving expense deduction. (See also [§302-17.4\(e\)](#) and [§302-17.4\(f\)](#).)

(ii) The total amount of reimbursement for a househunting trip, temporary quarters (up to 30 days at new station)

and real estate transaction expenses (see [§§302-17.3\(e\), \(f\), \(g\),](#) and [\(i\)](#)), up to the maximum allowable deduction under IRS tax regulations, shall be used as a moving expense deduction. For example, an employee and spouse filing a joint return and residing in the same household at the end of the tax year may deduct up to \$3,000 for these expenses. (No more than \$1,500 of the \$3,000 may be claimed for a househunting trip and temporary quarters expenses combined.) If the employee was reimbursed \$1,350 for a househunting trip and temporary quarters expenses and \$9,000 for real estate expenses, the moving expense deductions would be \$1,350 for the househunting trip and temporary quarters expenses and \$1,650 for real estate expenses. If the employee's reimbursement was \$1,850 for the househunting trip and temporary quarters expenses and \$9,000 for real estate expenses, the moving expense deductions would be \$1,500 for the househunting trip and temporary quarters expenses and \$1,500 for real estate expenses. If the employee had no reimbursement for a househunting trip and temporary quarters, the full \$3,000 would be applied to the \$9,000 reimbursement for real estate expenses. (See IRS Publication 521, "Moving Expenses," for these and other maximums which vary by situation and filing status.)

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations, the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbursement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed \$1,000 for a househunting trip and temporary quarters in 1989 and an additional \$1,000 for temporary quarters in 1990, this employee, according to his/her particular situation and tax filing status, may deduct \$1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1989, \$1,000 of the \$1,500 deduction is used to offset the \$1,000 reimbursement in 1989 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1989. The remaining \$500 (balance of the \$1,500 not used in determining covered taxable reimbursements for 1989) will be used to offset the \$1,000 temporary quarters reimbursement in 1990 (second Year 1), leaving \$500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1990.

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(4) Although the WTA amount is included in income (see [§302-17.7](#)), it shall not be included in the amount of covered taxable reimbursements. Under the procedures and formulas established herein, the proper amount of the RIT allowance is calculated using the RIT gross-up formula with the WTA and any prior RIT allowance payments excluded from covered taxable reimbursements.

(5) Agencies are cautioned that there may be moving expenses reimbursed to the employee that are not covered by the RIT allowance. (See exclusions in [§302-17.4](#); also see discussion in [§302-17.7](#) regarding covered taxable reimbursements versus nondeductible expenses.)

(d) *Determination of income level and filing status.* In order to determine the CMTR's needed to calculate the RIT allowance, the employee must determine the appropriate amount of earned income (as prescribed herein) that was or will be reported on his/her Federal tax return for the tax year in which the covered taxable reimbursements were received (Year 1). Such amount will also include the spouse's earned income if a joint filing status is claimed. For purposes of this regulation, appropriate earned income shall include only the amount of gross compensation reported on IRS Form(s) W-2, and, if applicable, the net earnings (or loss) from self-employment income as shown on Schedule SE of IRS Form 1040. (See [§302-17.5\(h\)](#).) (Note that moving expense reimbursements including the WTA amounts and any RIT allowance paid for a prior Year 1 are to be included in earned income and should be shown as income on the Form W-2; if they are not, other appropriate documentation shall be furnished by the agency.) (See [§302-17.7\(g\)](#).) The amount of earned income as determined under this paragraph and the tax filing status (for example, from lines 1 through 5 on the 1987 IRS Form 1040) shall be contained in a certified statement on, or attached to, the voucher claiming the RIT allowance. (See [§302-17.10](#).) If a joint filing status is claimed and the spouse's earned income is included, the spouse must sign the certified statement. If the spouse does not sign the statement, earned income will include only the employee's earned income and the RIT allowance will be calculated on that basis. This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse.

(e) *Determination of the CMTR's.* The gross-up formula used to calculate the RIT allowance in [paragraph \(f\)](#) of this section, requires the use of two CMTR's—one for Year 1 in which reimbursements were received and the other for Year 2 in which the RIT allowance is paid. CMTR's are single tax rates calculated to represent the Federal, State, and/or local income tax rates applicable to the earned income determined for Year 1. (See [paragraph \(d\)](#) of this section.) The CMTR's will be determined as follows:

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under [paragraph \(d\)](#)

of this section and contained in the certified statement by the employee (or employee and spouse) on the RIT allowance claim, and applying the prescribed Federal tax tables located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin). For example, if the income level for the 1989 tax year (Year 1) was \$84,100 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 33 percent for Year 1 (1989) (see the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin)) and 28 percent for Year 2 (1990) (see the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin)). These rates would be used regardless of how much of the \$84,100 was attributable to reimbursement for the employee's relocation expenses. (Note that these marginal rates are different from the withholding tax rate used for the WTA.) If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) are the CMTR's to be used in the RIT gross-up formula provided in [paragraph \(f\)](#) of this section. In such cases, the provisions of [paragraphs \(e\)\(2\)](#) and [\(e\)\(3\)](#) of this section, do not apply.

(2) *State marginal tax rate.* (i) If the employee incurs an additional State income tax (see definition in [§302-17.5\(a\)](#)) liability as a result of moving expense reimbursements, the appropriate State tax table located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) is to be used to determine the applicable State marginal tax rate that will be substituted into the formula for determining the CMTR for both Year 1 and Year 2. The appropriate State tax table will be the one that corresponds to the tax year in which the reimbursements are paid to the employee (Year 1). The income level determined in [paragraph \(d\)](#) of this section for Federal taxes shall be used to identify the appropriate income bracket in the State tax table. The applicable State marginal tax rate is obtained from the selected income bracket column for the State where the employee is required to pay State income tax on moving expense reimbursements. The tax rates shown in the table apply to all employees regardless of their filing status, except where a separate rate is shown for a single filing status.

(ii) The lowest income bracket shown in the State tax tables located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) is \$20,000-\$24,999. In cases where the employee's (employee's and spouse's, if filing jointly) earned income as determined under [paragraph \(d\)](#) of this section is less than this income bracket, an appropriate State marginal tax rate shall be established by the employing agency from the applicable State tax code or regulations issued pursuant thereto. Such State marginal tax rate shall be representative of the earned income level in question but in no case more than the marginal tax rate established in located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) for the \$20,000-\$24,999 income bracket for the particular State in which an additional tax obligation has been incurred.

(iii) The prescribed State marginal tax rates generally are expressed as a percent of taxable income. However, if the applicable State marginal tax rate is stated as a percentage of the Federal income tax liability, the State tax rate must be converted to a percent of taxable income to be used in the CMTR formulas in [paragraph \(e\)\(5\)](#) of this section. This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 33 percent for Year 1 and the State tax rate is 25 percent of the Federal income tax liability, the State tax rate stated as a percent of taxable income would be 8.25 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(iv) An employee may incur a State income tax liability on moving expense reimbursements in more than one State at the same or different marginal tax rates (i.e., double taxation). For example, an employee may incur taxes on moving expense reimbursements in one State because of residency in that State, and in another State because that particular State taxes income earned within its jurisdiction irrespective of whether the employee is a resident. In such cases, a single State marginal tax rate must be determined for use in the CMTR formulas in [paragraph \(e\)\(5\)](#) of this section. The general rules in [paragraphs \(e\)\(2\)\(iv\)\(A\)](#) through [\(C\)](#) of this section apply in determining the applicable single State marginal tax rate in such cases.

(A) If two or more States impose an income tax on an employee's moving expense reimbursement, but no two States tax the same portion of the reimbursement, then the reimbursement is not subject to double taxation. In this situation, the average of the applicable State marginal tax rates, as determined under [paragraphs \(e\)\(2\)\(i\)](#) through [\(iii\)](#) of this section, shall be treated as being imposed on the entire reimbursement, and shall be used in the CMTR formula.

(B) If two or more States impose an income tax on the moving expense reimbursement, and more than one State taxes the same portion of the reimbursement, but those States allow an adjustment or credit for income taxes paid to the other State(s), then the reimbursement is not subject to double taxation. In this situation, the highest of the applicable State marginal tax rates, as determined under [paragraphs \(e\)\(2\)\(i\)](#) through [\(iii\)](#) of this section, shall be used in the CMTR formula.

(C) If two or more States impose an income tax on the moving expense reimbursement, and more than one State taxes the same portion of the reimbursement without allowing an adjustment or credit for income taxes paid to the other, then the reimbursement is subject to double taxation. In this situation, the sum of the applicable State marginal tax rates, as determined under [paragraphs \(e\)\(2\)\(i\)](#) through [\(iii\)](#) of this section, shall be used in the CMTR formula.

(3) *Local marginal tax rate.* Because of the impracticality of establishing a single marginal tax rate table for local

income taxes that could be applied uniformly on a nationwide basis, appropriate local marginal tax rates shall be determined as provided in [paragraphs \(e\)\(3\)\(i\)](#) through [\(iii\)](#) of this section.

(i) If the employee incurs an additional local income tax (see definition [§302-17.5\(b\)](#)) liability as a result of moving expense reimbursements, he/she shall certify to such fact when claiming the RIT allowance (see certification statement in [§302-17.10](#)) by specifying the name of the locality imposing the income tax and the applicable marginal tax rate determined from the actual marginal tax rate table or schedule prescribed by the taxing locality. The marginal tax rate shall be the one applicable to the taxable income portion of the amount of earned income determined under [paragraph \(d\)](#) of this section for the employee (and spouse, if filing jointly). The same tax rate shall be used in calculating the CMTR for both Year 1 and Year 2. The employing agency shall establish procedures to determine whether the employee-certified local marginal tax rate is appropriate for the employee's income level and filing status and approve its use in the CMTR formulas. (See also [§302-17.10\(b\)\(2\)](#).)

(ii) If the local marginal tax rate is stated as a percentage of Federal or State income tax liability, such rate must be converted to a percent of taxable income for use in the CMTR formulas. This is accomplished by multiplying the applicable Federal or State tax rate for Year 1 as determined in [paragraph \(e\)\(1\)](#) or [\(e\)\(2\)](#) of this section by the applicable local tax rate. For example, if the State tax rate for Year 1 is 6 percent and the local tax rate is 50 percent of State income tax liability, the local tax rate stated as a percentage of taxable income would be 3 percent. The local tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(iii) The situations described in [paragraph \(e\)\(2\)\(iv\)](#) of this section with respect to State income taxes may also be encountered with local income taxes. If such situations do occur, the rules prescribed for determining the single State marginal tax rate shall also be applied to determine the single local marginal tax rate for use in the CMTR formulas.

(4) *Marginal tax rates for the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. possessions.* (i) *The Commonwealth of Puerto Rico.* A Federal employee who is relocated to or from a point, or between points, in the Commonwealth of Puerto Rico may be subject to income tax on the employee's salary (including moving expense reimbursements) by both the U.S. Government and the government of Puerto Rico. However, under the current law of Puerto Rico, such employee receives a credit on his/her Puerto Rico income tax for the amount of taxes paid to the United States. The rules in [paragraphs \(e\)\(4\)\(i\)\(A\)](#) through [\(C\)](#) apply in determining the marginal tax rate applicable for transfers to, from, or between points in Puerto Rico.

(A) The applicable Puerto Rico marginal tax rate shall be determined by using the income level determined in paragraph (d) of this section for Federal taxes and the employee's filing status. The Puerto Rico marginal tax rate for Year 1 will be used in computing the CMTR for both Year 1 and Year 2. The Puerto Rico tax tables are located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin).

(B) If the applicable Puerto Rico marginal tax rate is higher than the applicable Federal marginal tax rate, then the total amount of taxes paid by the employee to both jurisdictions is equal to the employee's total income tax liability to the Commonwealth of Puerto Rico before any credit is given for taxes paid to the United States. The Federal marginal tax rate, therefore, is of no consequence and will be disregarded. In such cases, the formula in paragraph (e)(5)(iii) of this section will be used to compute the CMTR. The CMTR formula shall include only the Puerto Rico marginal tax rate, the State marginal tax rate as determined under paragraph (e)(2) of this section (when applicable), and the local marginal tax rate as determined under paragraph (e)(3) of this section. For purposes of applying the Puerto Rico CMTR formula in paragraph (e)(5)(iii) of this section, the State marginal tax rate will be applicable if both Puerto Rico and one or more of the States impose an income tax on the moving expense reimbursement, and more than one of these entities taxes the same portion of the reimbursement without allowing an adjustment or credit for income taxes paid to the other. In this situation, the S component of the CMTR formula will be the applicable State marginal tax rate as determined under paragraph (e)(2) of this section.

(C) If the applicable Puerto Rico marginal tax rate is equal to or lower than the applicable Federal marginal tax rate, then the total amount of taxes paid by the employee to both jurisdictions is equal to the employee's total Federal income tax liability. The Puerto Rico marginal tax rate, therefore, is of no consequence in such cases and will be disregarded. The CMTR will be computed using the formula in paragraphs (e)(5)(i) and (ii) of this section. This formula will include the Federal marginal tax rate as determined under paragraph (e)(1) of this section, the State marginal tax rate as determined under paragraph (e)(2) of this section (when applicable), and the local marginal tax rate as determined under paragraph (e)(3) of this section. The State marginal tax rate will be applicable if one or more States impose tax on the moving expense reimbursement.

(ii) *The Commonwealth of the Northern Mariana Islands and the U.S. possessions.* A Federal employee who is relocated to or from a point, or between points, in the Commonwealth of the Northern Mariana Islands or the U.S. pos-

sessions (Guam, American Samoa, and the U.S. Virgin Islands) is subject to both Federal income tax and income tax assessed by the Commonwealth of the Northern Mariana Islands or the U.S. possession, as applicable. However, the income tax system and rates for the Commonwealth of the Northern Mariana Islands and for the U.S. possessions are identical to the U.S. Federal income tax system and rates. This constitutes a "mirror tax" system. A tax credit or exclusion is provided by one of the taxing jurisdictions (either the U.S., the Commonwealth of the Northern Mariana Islands, or the U.S. possession, as appropriate) to prevent double taxation. The marginal tax rate for the Commonwealth of the Northern Mariana Islands or the U.S. possession, therefore, is of no consequence since it is identical to the Federal marginal income tax rate and is completely offset by a corresponding credit or exclusion. Thus, the Commonwealth's or the possession's tax rate will not be factored into the CMTR formula. The CMTR will be computed as provided in paragraphs (e)(5)(i) and (ii) based solely on the Federal marginal tax rate; when applicable, the State(s) marginal tax rate; and the local marginal tax rate.

(5) *Calculation of the CMTR's.* As stated above, the gross-up formula for calculating the RIT allowance requires the use of two CMTR's. However, the required CMTR's cannot be calculated by merely adding the Federal, State, and local marginal tax rates together because of the deductibility of State and local income taxes from income for Federal income tax purposes. The State tax tables located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) are designed to use the same income amount as that determined for the Federal taxes, which reflects, among other things, State and local tax deductions. The formulas prescribed below for calculating the CMTR's are designed to adjust the State and local tax rates to compensate for their deductibility from income for Federal tax purposes.

(i) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

$$\text{CMTR Formula: } X = F + (1-F)S + (1-F)L$$

Where:

X = CMTR for Year 1

F = Federal tax rate for Year 1

S = State tax rate for Year 1

L = local tax rate for Year 1

(A) *Federal, State, and local taxes incurred.* If the employee incurs Federal, State, and local income taxes on moving expense reimbursements, the CMTR formula may be solved as follows:

Example:

If:

F = 33 percent of income

S = 6 percent of income

L = 3 percent of income

Then:

$$X = .33 + (1.00 - .33) .06 + (1.00 - .33) .03$$

$$X = .3903$$

(B) *Federal and State income taxes only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income taxes but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example:

If:

F = 33 percent of income

S = 6 percent of income

L = Zero

Then:

$$X = .33 + (1.00 - .33) .06$$

$$X = .3702$$

(C) *Federal and local income taxes only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income taxes but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example:

If:

F = 33 percent of income

S = Zero

L = 3 percent of income

Then:

$$X = .33 + (1.00 - .33) .03$$

$$X = .3501$$

(ii) *Calculation of the CMTR for Year 2.* The calculation of the CMTR for Year 2 is the same as described for Year 1, except that the Federal tax rate for Year 2 is used in place of the Federal tax rate for Year 1. State and local tax rates remain the same as for Year 1. The following formula shall be used to determine the CMTR for Year 2:

CMTR Formula:  $W = F + (1-F)S + (1-F)L$

Where:

W = CMTR for Year 2

F = Federal tax rate for Year 2

S = State tax rate for Year 1

L = local tax rate for Year 1

(iii) *Calculation of CMTR's for Puerto Rico.* The following formula shall be used to calculate the CMTR for trans-

fers to, from, or between points in Puerto Rico. (This formula is different from the formulas provided in [paragraphs \(e\)\(5\)\(i\)](#) and [\(ii\)](#) of this section since the Federal marginal tax rate is disregarded.)

CMTR Formula:  $X = P + S + L$

Where:

X = CMTR for Year 1 and Year 2

P = Puerto Rico tax rate for Year 1

S = State tax rate for Year 1, when applicable (See [paragraph \(e\)\(4\)\(i\)\(B\)](#) of this section.)

L = Local tax rate for Year 1

(f) *Determination of the RIT allowance.* The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1, the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as follows:

Formula:

$$Z = \frac{X}{1-W}(R) - \frac{1-X}{1-W}(Y)$$

Where:

Z = RIT allowance payable in Year 2

X = CMTR for Year 1

W = CMTR for Year 2

R = covered taxable reimbursements

Y = total WTA's paid in Year 1

Example:

If:

$$X = .3903$$

$$W = .3448$$

$$R = \$21,800$$

$$Y = \$5,450$$

Then:

$$Z = \frac{.3903}{1.00 - .3448} (\$21,800) - \frac{1.00 - .3903}{1.00 - .3448} (\$5,450)$$

$$Z = .5957(\$21,800) - .9306(\$5,450)$$

$$Z = \$12,986.26 - \$5,071.77$$

$$Z = \$7,914.49$$

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA to be deducted, the value of "Y" is zero and the formula stated in [paragraph \(f\)\(1\)](#) of this section, for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:

Example:

If:

X = .3903

W = .3448

R = \$21,800

Y = Zero

Then:

$$Z = \frac{.3903}{1.00 - .3448} (\$21,800)$$

Z = .5957 (\$21,800)

Z = \$12,986.26

(3) Certain States do not allow the deduction of all or part of the covered moving expenses that are deductible for Federal income tax purposes. The State gross-up to cover the additional State income tax liability resulting from the covered moving expense reimbursements received in Year 1 that are deductible for Federal income tax purposes but not for State income tax purposes is calculated in Year 2 as follows:

(i) The State gross-up is calculated by substituting the amount of covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes, the Federal tax rate for Year 1, the State tax rate for Year 1, and the combined marginal tax rate for Year 2 into the State gross-up formula as follows:

Formula:

$$A = \frac{S(1 - F)}{1 - W}(N)$$

Where:

A = State gross-up

F = Federal tax rate for Year 1

S = State tax rate for Year 1

W = CMTR for Year 2

N = covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes

Example:

If:

F = .33

S = .06

W = .3448

N = \$9,250

Then:

$$A = \frac{.06(1.00 - .33)}{1.00 - .3448} (\$9,250)$$

$$A = .0614 (\$9,250)$$

$$A = \$567.95$$

(ii) Add the State gross-up to the RIT allowance as calculated using the formula in paragraph (f)(1) of this section. The result is the RIT allowance adjusted for those States that do not allow moving expense deductions.

Example:

RIT allowance payable in Year	\$7,914.49
Plus adjustment factor	+567.95
Total	\$8,482.44

(4) If the amount of the RIT allowance is greater than zero, it is payable to the employee on the travel voucher as a relocation or moving expense allowance. The RIT allowance amount is included in the employee's gross income for Year 2 and, therefore, subject to appropriate withholding taxes. (See net payment to employee in paragraph (g) of this section.) The RIT allowance amount will be reported on IRS Form W-2 for Year 2 (including applicable income tax withholding amounts) and on IRS Form 4782 for the employee's information.

(5) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See §302-17.7(e)(2) and §302-17.9(b).)

(6) Any changes to the employee's income level or filing status for Year 1 that would affect the marginal tax rates (Federal, State, or local) used in calculating the RIT allowance must be reported to the agency by the employee as provided in §302-17.9(b)(2). (See also §302-17.10 for certified statement regarding these changes.)

(g) *Determination of the net payment due employee in Year 2.* Since the amount of the RIT allowance is income to the employee in Year 2, it is subject to the same tax withholding requirements as all other moving expense reimbursements. Agencies should determine the appropriate amounts for withholding taxes under their internal tax withholding procedures. The amount of withholding taxes is deducted from the RIT allowance to arrive at the net payment to the employee.

### **§302-17.9 Responsibilities.**

(a) *Agency.* Finance offices will calculate the amount of the gross-up for the WTA in Year 1 in accordance with procedures outlined herein and credit this amount to the employee at the time of reimbursement as provided in §302-17.7(e). The WTA will be reflected on the employee's Form W-2 for Year 1. The RIT allowance may be calculated in Year 2 either by the employee or by the agency finance office based on information provided by the employee on the voucher, as directed by the agency's implementing policies and procedures. In addition, agencies shall prescribe appropriate and

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necessary implementing procedures as provided elsewhere in this part.

(b) *Employee.* (1) The employee is required to submit a claim for the RIT allowance and to file the tax information for Year 1 specified in §302-17.10 with his/her agency in Year 2, regardless of whether any additional reimbursement for the RIT allowance is owed the employee. (See §302-17.7(e) for employee agreement.)

(2) If any action occurs (i.e., amended tax return, tax audit, etc.) that would change the information provided in Year 2 by the employee to his/her agency for use in calculating the RIT allowance due the employee for Year 1 taxes, this information must be provided by the employee to his/her agency under procedures prescribed by the agency. (See §302-17.10.)

(3) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See §302-17.7(e)(2) and §302-17.8(f)(5).)

#### **§302-17.10 Claims for payment and supporting documentation and verification.**

(a) *Claims forms.* Claims for payment of the RIT allowance shall be submitted by the employee in Year 2 on SF 1012 (Travel Voucher) or other authorized travel voucher form. When claiming payment for the RIT allowance, the employee shall furnish and certify to certain tax information that has been or will be shown on his/her actually prepared tax returns. The spouse must also sign statement if joint filing status is claimed and spouse's income is included on statement. This information shall be contained in a certified statement on, or attached to, the SF 1012 reading essentially as follows:

##### **CERTIFIED STATEMENT**

I certify that the following information, which is to be used in calculating the RIT allowance to which I am entitled, has been (or will be) shown on the income tax returns filed (or to be filed) by me (or by my spouse and me) with the applicable Federal, State, and local (specify which) tax authorities for the 19\_\_ tax year.

—Gross compensation as shown on attached IRS Form(s) W-2 and, if applicable, net earnings (or loss) from self-employment income shown on attached Schedule SE (Form 1040):

	<b>Form(s) W-2</b>	<b>Schedule SE</b>
Employee	\$ _____	\$ _____
Spouse (if filing jointly <sup>1</sup> )	\$ _____	\$ _____
Total (both columns)	.....	\$ _____

—Filing status: \_\_\_\_\_  
(Specify one of the filing status items that was (or will be) claimed on IRS Form 1040.)

—Marginal tax rates from the appropriate RIT tax table(s) located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin) and local tax tables derived under procedures prescribed in 41 CFR Part 302-17.

Federal for Year 1 \_\_\_\_\_

Federal for Year 2 \_\_\_\_\_

State (specify which): \_\_\_\_\_

Local (specify which): \_\_\_\_\_

The above information is true and accurate to the best of my knowledge. I (we) agree to notify the appropriate agency official of any changes to the above (i.e., from amended tax returns, tax audit, etc.) so that appropriate adjustments to the RIT allowance can be made. The required supporting documents are attached. Additional documentation will be furnished if requested.

I (we) further agree that if the 12-month service agreement required by 41 CFR 302-2.13 is violated, the total amount of the RIT allowance will become a debt due the United States Government and will be repaid according to agency procedures.

\_\_\_\_\_ Employee's signature

\_\_\_\_\_ Date

\_\_\_\_\_ Spouse's signature (if filing jointly<sup>1</sup>)

\_\_\_\_\_ Date

<sup>1</sup> If a joint filing status is claimed and spouse's income is included, the spouse must sign the statement. If the spouse does not sign the document, earned income will include only the employee's earned income as provided in 41 CFR 302-17.8(d). This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse.

(b) *Supporting documentation/verification.* The claim for the RIT allowance shall be supported by documentation attached to the voucher and by verification of State and local tax obligations as provided below:

(1) Copies of the appropriate IRS Forms W-2 and, if applicable, the completed IRS Schedule SE (Form 1040) shall be attached to the voucher to substantiate the income amounts shown in the certified statement. Employee (and spouse, if filing jointly) must agree to provide additional documentation to verify income amounts, filing status, and State and local income tax obligations if requested by the agency.

(2) In order to determine or verify whether a particular State or local tax authority imposes a tax on moving expense reimbursements, it is incumbent upon the appropriate agency officials to become familiar with the State and local tax laws that affect their transferring employees. In cases where the taxability of moving expense reimbursements is not clear, an agency may pay a RIT allowance which reflects only those

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State and local tax obligations that are clearly imposed under State and local tax law. Once the questionable State or local tax obligations are resolved, agencies may recompute the RIT allowance and make appropriate payment adjustments.

(c) *Fraudulent claims.* A claim against the United States is forfeited if the claimant defrauds or attempts to defraud the Government in connection therewith (28 U.S.C. 2514). In addition, there are two criminal provisions under which severe penalties may be imposed on an employee who knowingly presents a false, fictitious, or fraudulent claim against the United States (18 U.S.C. 287 and 1001). The employee's claim for payment of the RIT allowance shall accurately reflect the facts involved in every instance so that any violation of these provisions will be avoided.

**§302-17.11 Violation of service agreement.**

In the event the employee violates the terms of the service agreement required under [§302-2.13](#), no part of the RIT allowance or the WTA will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are repaid by the employee.

**§302-17.12 Advance of funds.**

No advance of funds is authorized in connection with the allowance provided in this part.

**§302-17.13 Source of references.**

The following references or publications have been used as source material for this part.

- (a) Internal Revenue Code (IRC), section 164(a)(3) (26 U.S.C. 164(a)(3)) pertaining to the deductibility of State and local income taxes, and section 217 (26 U.S.C. 217), pertaining to moving expenses.
- (b) Internal Revenue Service Publication 521, "Moving Expenses."
- (c) Internal Revenue Service, Circular E, "Employer's Tax Guide."
- (d) Department of the Treasury Financial Manual, TFM 3-5000.
- (e) 31 CFR 215.2 (5 U.S.C. 5516, 5517, and 5520).

**§302-17.14 Where can I find the tax tables used for calculating the relocation income tax (RIT) allowances?**

The annual tax tables for Federal, State, and Puerto Rico needed for calculating RIT allowance are published annually as an FTR Bulletin. These Bulletins are located at [www.gsa.gov/ftrbulletin](http://www.gsa.gov/ftrbulletin). A notice announcing each new Bulletin will be published in the *Federal Register*.

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# FEDERAL TRAVEL REGULATION

## CHAPTER 303—PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

### Part 303-70—Agency Requirements for Payment of Expenses Connected With the Death of Certain Employees

#### Subpart A—General Policies

- §303-70.1—When must we authorize payment of expenses related to an employee's death?
- §303-70.2—Must we pay death-related expenses when the employee's death is not work-related?
- §303-70.3—Must we pay death-related expenses for an employee who dies while on leave, or who dies on a nonworkday while on TDY or stationed outside CONUS?
- §303-70.4—May we pay death-related expenses under this chapter if the same expenses are payable under other laws of the United States?

#### Subpart B—General Procedures

- §303-70.100—May we pay the travel expenses for an escort for the remains of a deceased employee?
- §303-70.101—Must we provide assistance in arranging for preparation and transportation of employee remains?

#### Subpart C—Allowances for Preparation and Transportation of Remains

- §303-70.200—What costs must we pay for preparation and transportation of remains?

#### Subpart D—Transportation of Immediate Family Members, Baggage, and Household Goods

- §303-70.300—Must we pay transportation costs to return the deceased employee's baggage?
- §303-70.301—Are there any limitations on the baggage we may transport?
- §303-70.302—When the employee dies at or while in transit to or from his/her official station outside CONUS, must we return the employee's immediate family, baggage and household goods to the residence or alternate destination?
- §303-70.303—Must we continue payment of relocation expenses for an employee's immediate family if the employee dies while in transit to his/her new duty station within CONUS?
- §303-70.304—Must we continue payment of relocation expenses for an employee's immediate family if the employee dies after reporting to the new duty station within CONUS, but the family was in transit to the new duty station or had not begun its en route travel?
- §303-70.305—What relocation expenses must we authorize for the immediate family under §§303-70.303 and 303-70.304?

#### Subpart E—Preparation and Transportation Expenses for Remains of Immediate Family Members

- §303-70.400—When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, must we furnish mortuary services?
- §303-70.401—When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, must we pay expenses to transport the remains?
- §303-70.402—When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, may we pay burial expenses?
- §303-70.403—When a family member, residing with the employee, dies while in transit to or from the employee's duty station outside CONUS, must we furnish mortuary services and/or transportation of the remains?

#### Subpart F—Policies and Procedures for Payment of Expenses

- §303-70.500—Are receipts required for claims for reimbursement?

§303-70.501—To whom should we make payment?

**Subpart G—Escort of Remains**

§303-70.600—How many persons may we authorize travel expenses for to escort the remains of a deceased employee?

§303-70.601—Under what circumstances may we authorize the escort of remains?

§303-70.602—What travel expenses may we authorize for the escort of remains?

Chapter 303—Payment of Expenses Connected With the Death of Certain Employees

Part 303-70—Agency Requirements for Payment of Expenses Connected With the Death of Certain Employees **§303-70.300**

**PART 303-70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES**

**Authority:** 5 U.S.C. 5721-5738; 5741-5742; E.O. 11609, 3 CFR, 1971-1975 Comp., p. 586.

**Subpart A—General Policies**

**§303-70.1 When must we authorize payment of expenses related to an employee's death?**

When, at the time of death, the employee was:

- (a) On official travel; or
- (b) Performing official duties outside CONUS; or
- (c) Absent from duty as provided in [§303-70.3](#); or
- (d) Reassigned away from his/her home of record under a mandatory mobility agreement.

**§303-70.2 Must we pay death-related expenses when the employee's death is not work-related?**

Yes, provided the requirements in [§303-70.1](#) are met.

**§303-70.3 Must we pay death-related expenses for an employee who dies while on leave, or who dies on a nonworkday while on TDY or stationed outside CONUS?**

Yes. However, payment cannot exceed the amount allowed if death had occurred at the temporary duty station or at the official station outside CONUS.

**§303-70.4 May we pay death-related expenses under this chapter if the same expenses are payable under other laws of the United States?**

No.

**Note to Subpart A:** When an employee dies from injuries sustained while performing official duty, death-related expenses are payable under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8134. For further information contact the

Department of Labor,  
Federal Employees' Compensation Division,  
200 Constitution Avenue, NW,  
Washington, DC 20210.

**Subpart B—General Procedures**

**§303-70.100 May we pay the travel expenses for an escort for the remains of a deceased employee?**

Yes, in accordance with [§§303-70.600](#) through [303-70.602](#).

**§303-70.101 Must we provide assistance in arranging for preparation and transportation of employee remains?**

Yes.

**Subpart C—Allowances for Preparation and Transportation of Remains**

**§303-70.200 What costs must we pay for preparation and transportation of remains?**

All actual costs including but not limited to:

- (a) Preparation of remains:
  - (1) Embalming or cremation;
  - (2) Necessary clothing;
  - (3) A casket or container suitable for shipment to place of burial;
  - (4) Expenses necessary to comply with local laws at the port of entry in the United States; and
- (b) Transportation of remains by common carrier (that is normally used for transportation of remains), hearse, other means, or a combination thereof, from the temporary duty station or official station outside CONUS to the employee's residence, official station, or place of burial, including but not limited to:
  - (1) Movement from place of death to a mortuary and/or cemetery;
  - (2) Shipping permits;
  - (3) Outside case for shipment and sealing of the case if necessary;
  - (4) Removal to and from the common carrier; and
  - (5) Ferry fares, bridge tolls, and similar charges.

**Note to §303-70.200:** Costs for an outside case are not authorized for transportation by hearse. Costs for transportation by hearse or other means cannot exceed the cost of common carrier (that is normally used for transportation of remains). Transportation costs to the place of burial cannot exceed the actual cost of transportation to the employee's residence.

**Subpart D—Transportation of Immediate Family Members, Baggage, and Household Goods**

**§303-70.300 Must we pay transportation costs to return the deceased employee's baggage?**

Yes, you must pay transportation costs to return the deceased employee's baggage to his/her official station or residence. However, you may not pay insurance of or reimbursement for loss or damage to baggage.

## §303-70.301

## FEDERAL TRAVEL REGULATION

### **§303-70.301 Are there any limitations on the baggage we may transport?**

Yes. You may only transport government property and the employee's personal property.

### **§303-70.302 When the employee dies at or while in transit to or from his/her official station outside CONUS, must we return the employee's immediate family, baggage and household goods to the residence or alternate destination?**

Yes. However, your agency head or his/her designated representative must approve the family's election to return to an alternate destination, and the allowable expenses cannot exceed the cost of transportation to the decedent's residence. Travel and transportation must begin within one year from the date of the employee's death. A one-year extension may be granted if requested by the family prior to the expiration of the one-year limit.

### **§303-70.303 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies while in transit to his/her new duty station within CONUS?**

Yes, if the immediate family chooses to continue the relocation, you must continue payment of relocation expenses for the immediate family if the immediate family was included on the employee's relocation travel orders. (See [§303-70.305](#).)

### **§303-70.304 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies after reporting to the new duty station within CONUS, but the family was in transit to the new duty station or had not begun its en route travel?**

Yes, if the immediate family chooses to continue the relocation, you must continue payment of relocation expenses for the immediate family if the immediate family was included on the employee's relocation travel orders. (See [§303-70.305](#).)

### **§303-70.305 What relocation expenses must we authorize for the immediate family under §§303-70.303 and 303-70.304?**

When the immediate family chooses to continue the relocation, the following expenses must be authorized:

- (a) Travel to the new duty station; or
- (b) Travel to an alternate destination, selected by the immediate family, not to exceed the remaining constructive cost of travel to the new duty station.
- (c) Temporary quarters not to exceed 60 days, to be paid at the per diem rate for an unaccompanied spouse or domestic partner and immediate family.
- (d) Shipment of household goods to the new or old duty station, or to an alternate destination selected by the immediate family. However, the cost may not exceed the constructive

cost of transportation between the old and the new duty stations.

- (e) Storage of household goods not to exceed 90 days.
- (f) Reimbursement of real estate expenses incident to the relocation.

(g) Shipment of POV to the new or old duty station, or to an alternate destination, selected by the immediate family. However, the cost may not exceed the constructive cost of transportation between the old and the new duty stations.

## **Subpart E—Preparation and Transportation Expenses for Remains of Immediate Family Members**

### **§303-70.400 When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, must we furnish mortuary services?**

Yes, if requested by the employee and when:

- (a) Local commercial mortuary facilities or supplies are not available; or
- (b) The cost of available mortuary facilities or supplies are prohibitive as determined by your agency head.

**Note to §303-70.400:** The employee must reimburse you for all furnished mortuary facilities and supplies.

### **§303-70.401 When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, must we pay expenses to transport the remains?**

Yes, if requested by the employee, payment must be made to transport the remains to the residence of the immediate family member. The employee may elect an alternate destination, which must be approved by your agency head or his/her designated representative. In that case, the allowable expenses cannot exceed the cost of transportation to the decedent's residence.

### **§303-70.402 When an immediate family member, residing with the employee, dies while the employee is stationed outside CONUS, may we pay burial expenses?**

No.

### **§303-70.403 When a family member, residing with the employee, dies while in transit to or from the employee's duty station outside CONUS, must we furnish mortuary services and/or transportation of the remains?**

You must furnish transportation if requested by the employee. You must follow the guidelines in [§303-70.401](#) for

transportation expenses. You must furnish mortuary services only if the conditions in [§303-70.400](#) are met.

## **Subpart F—Policies and Procedures for Payment of Expenses**

### **§303-70.500 Are receipts required for claims for reimbursement?**

Yes.

### **§303-70.501 To whom should we make payment?**

You should pay:

- (a) The person performing the service; or
- (b) Reimburse the person who made the original payment.

## **Subpart G—Escort of Remains**

### **§303-70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?**

Travel expenses may be authorized for no more than two persons.

### **§303-70.601 Under what circumstances may we authorize the escort of remains?**

Escort of remains may be authorized when the employee's death occurs:

- (a) While in a travel status away from his/her official station in the United States; or
- (b) While performing official duties outside the United States or in transit thereto or therefrom.

### **§303-70.602 What travel expenses may we authorize for the escort of remains?**

You may authorize any travel expenses in accordance with [Chapter 301](#) of this title that are necessary for the escort of remains to:

- (a) The home or official station of the deceased; or
- (b) Any other place appropriate for interment as determined by the head of your agency.

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## **FEDERAL TRAVEL REGULATION**

### **CHAPTER 304—PAYMENT OF TRAVEL EXPENSES FROM A NON-FEDERAL SOURCE**

#### **Subchapter A—Employee’s Acceptance of Payment From a Non-Federal Source for Travel Expenses**

##### **Part 304-1—Authority**

§304-1.1—To whom do the pronouns “I”, “you”, and their variants refer throughout this part?

§304-1.2—Under what authority may I accept payment of travel expenses from a non-Federal source?

##### **Part 304-2—Definitions**

§304-2.1—What definitions apply to this chapter?

##### **Part 304-3—Employee Responsibility**

###### **Subpart A—General**

§304-3.1—To whom do the pronouns “I”, “you”, and their variants refer throughout this part?

§304-3.2—What is the purpose of this part?

§304-3.3—May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?

§304-3.4—What payments may my agency or I accept from a non-Federal source?

§304-3.5—May I solicit payment of my travel expenses from a non-Federal source to attend a meeting?

§304-3.6—May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting?

§304-3.7—What must I do if I am contacted directly by a non-Federal source offering to pay my travel expenses to attend a meeting?

§304-3.8—Must I adhere to the provisions of the Fly America Act when I receive air transportation to a meeting furnished or paid by a non-Federal source?

§304-3.9—May I use other than coach-class accommodation on common carriers or other than lowest first-class accommodations on ships when a non-Federal source pays in full for my transportation expenses to attend a meeting? |

§304-3.10—[Reserved]

§304-3.11—Am I limited to the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?

§304-3.12—Must I receive advance approval from my agency before I perform travel paid by a non-Federal source to attend a meeting?

§304-3.13—After I begin travel to a meeting, what should I do if a non-Federal source offers to pay for one or more of my travel expenses without my or my agency's prior knowledge?

§304-3.14—May a non-Federal source pay for my spouse to accompany me to a meeting?

§304-3.15—Must I provide my agency with information about any payment I receive on its behalf?

###### **Subpart B—Reimbursement Claims**

§304-3.16—What must I submit to my agency for reimbursement when a non-Federal source pays all or part of my travel expenses to attend a meeting?

###### **Subpart C—Reports**

§304-3.17—if I am required to file a confidential or public financial disclosure report, must I report travel payments I receive from a non-Federal source on that report?

**Subpart D—Penalties**

§304-3.18—What happens if I accept a payment from a non-Federal source that is in violation of this part?

**Subpart E—Relation to Other Authorities**

§304-3.19—Are there other situations when I may accept payment from a non-Federal source for my travel expenses?

**Subchapter B—Agency Requirements**

**Part 304-4—Authority**

§304-4.1—To whom do the pronouns “we”, “you”, and their variants refer throughout this part?

§304-4.2—What is the purpose of this part?

§304-4.3—Under what other authority may we accept payment for travel expenses from a non-Federal source?

**Part 304-5—Agency Responsibilities**

§304-5.1—When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?

§304-5.2—Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?

§304-5.3—What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?

§304-5.4—May we authorize an employee to exceed the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations where we have authorized acceptance of payment from a non-Federal source for such allowances?

§304-5.5—May we authorize an employee to travel by other than coach-class on common carriers or other than lowest first-class on ships if we accept payment in full from a non-Federal source for such transportation expenses?

§304-5.6—May we authorize acceptance of payment from more than one non-Federal source for a single trip?

**Part 304-6—Payment Guidelines**

**Subpart A—General**

§304-6.1—May we accept a monetary payment in the form of cash from a non-Federal source?

§304-6.2—What should we do if a non-Federal source does not pay the full cost for expenses that an employee will incur during travel?

§304-6.3—What happens if an employee accepts payment from a non-Federal source that is in violation of this part?

**Subpart B—Reports**

§304-6.4—What form must we use to report payments received by the agency from non-Federal sources?

§304-6.5—What guidelines must we follow when using the Standard Form (SF) 326?

**Subpart C—Valuation**

§304-6.6—How do we determine the value of payments in kind that are to be reported on Standard Form (SF) 326?

§304-6.7—Must we report on the Standard Form (SF) 326 any information that is protected from disclosure by statute?

§304-6.8—Will the reports be made available for public inspection?

§304-6.9—Does acceptance by OGE of the Standard Form (SF) 326 constitute a determination by OGE that the data submitted is adequate or a concurrence by OGE in the agency's conflict of interest analysis?

## **Subchapter C—Acceptance of Payments for Training**

### **Part 304-7—Authority/Applicability**

§304-7.1—What is the purpose of this subchapter?

§304-7.2—To whom does this subchapter apply?

§304-7.3—Who is exempt from this subchapter?

### **Part 304-8—Definitions**

§304-8.1—For the purpose of this subchapter, who is a donor?

### **Part 304-9—Contributions and Awards**

§304-9.1—To whom do the pronouns “I”, “you”, and their variants refer throughout this part?

§304-9.2—May we allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings under this subchapter?

§304-9.3—May we pay an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting?

§304-9.4—May we reimburse an employee for training expenses that are not fully paid by a donor?

§304-9.5—What if the employee is compensated by a donor and by us for the same expenses?

§304-9.6—Must we reduce an employee's reimbursement when a donor pays for items for which we are not authorized to reimburse the employee?

§304-9.7—Must we obtain data from employees or donors for all expenses received?

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**SUBCHAPTER A—EMPLOYEE’S ACCEPTANCE OF PAYMENT FROM A  
NON-FEDERAL SOURCE FOR TRAVEL EXPENSES**

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## **PART 304-1—AUTHORITY**

**Authority:** 31 U.S.C. 1353 and 5 U.S.C. 5707.

### **§304-1.1 To whom do the pronouns “I”, “you”, and their variants refer throughout this part?**

Use of pronouns “I”, “you”, and their variants throughout this part refers to the employee.

### **§304-1.2 Under what authority may I accept payment of travel expenses from a non-Federal source?**

Under the authority of this part and 31 U.S.C. 1353, you may accept payment of travel expenses from a non-Federal source on behalf of your agency, but not on behalf of yourself, when specifically authorized to do so by your agency and only for official travel to a meeting. Except as provided in [§304-3.13](#) of this subchapter, your agency must approve acceptance of such payments in advance of your travel.

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## PART 304-2—DEFINITIONS

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 1353.

### §304-2.1 What definitions apply to this chapter?

The following definitions apply to this chapter:

*Employee* means an appointed officer or employee of an executive agency as defined in 5 U.S.C. 105, including a special Government employee as defined in 18 U.S.C. 202, or an expert or consultant appointed under the authority of 5 U.S.C. 3109.

*Meeting(s) or similar functions (meeting)* means a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station. "Meeting" as defined in this chapter does not include a meeting or other event required to carry out an agency's statutory or regulatory functions (i.e., a function that is essential to an agency's mission) such as investigations, inspections, audits, site visits, negotiations or litigation. "Meeting" also does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal sources products or services, or long term TDY or training travel. A meeting need not be widely attended for purposes of this definition and includes but is not limited to the following:

(1) An event where the employee will participate as a speaker or panel participant focusing on his/her official duties or on the policies, programs or operations of the agency.

(2) A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties.

(3) An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.

*Non-Federal source* means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, international or multinational organization (irrespective of whether an agency holds membership in

the organization or association), or foreign, State or local government (including the government of the District of Columbia).

*Payment* means a monetary payment from a non-Federal source to a Federal agency for travel, subsistence, related expenses by check or other monetary instrument payable to the Federal agency (i.e., electronic fund transfer (EFT), money order, charge card, etc.) or payment in kind.

*Payment in kind* means transportation, food, lodging, or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of any fees that a non-Federal source normally collects from meeting attendees (e.g., registration fees).

*Travel, subsistence, and related expenses (travel expenses)* means the same types of expenses payable under [Chapter 301](#) of this title, the Foreign Affairs Manual (FAM), and the Joint Travel Regulations (JTR) for transportation, food, lodging or other travel-related services for official travel (e.g., baggage expenses, services of guides, drivers, interpreters, communication services, hire of conference rooms, lodging taxes, laundry/dry cleaning, taxi fares, etc.). These expenses also include conference or training fees (in whole or in part), as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting, provided in kind, and made available by the meeting sponsor(s) to all attendees. For example, this definition as applied to this chapter would allow an employee or spouse to attend a sporting event hosted by the sponsor(s) in connection with the meeting that is available to all participants. However, it would not allow the employee to accept tickets to a professional sporting event, concert or similar event, for use at a later date even if such tickets were given to all other participants. The Foreign Affairs Manual is obtainable from: Bureau of Administration, A/IM/CST/MMS/DIR, Room 264, U.S. Department of State, Washington, DC 20520; (202) 647-3602. The Joint Travel Regulations are obtainable from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20342-0001, or available for downloading from the internet at <http://www.dtic.mil/perdiem>.

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**PART 304-3—EMPLOYEE RESPONSIBILITY**

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 1353.

**Subpart A—General****§304-3.1 To whom do the pronouns “I”, “you”, and their variants refer throughout this part?**

Use of pronouns “I”, “you”, and their variants throughout this part refers to the employee.

**§304-3.2 What is the purpose of this part?**

The purpose of this part is to establish Governmentwide policy and guidance for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings. It describes how such payments must be accepted by the agency for travel of agency employee(s) and/or his/her spouse for official Government travel. Except as provided in §304-3.13 of this part, advance agency approval is required to receive such payments.

**§304-3.3 May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?**

Yes, you or your agency may accept such a payment from a non-Federal source, but you may only accept when your agency specifically authorizes such acceptance under the requirements of this part. Except as provided in §304-3.13 of this part, your agency must approve acceptance of such payment in advance of your travel.

**§304-3.4 What payments may my agency or I accept from a non-Federal source?**

You or your agency may accept payments other than cash from a non-Federal source for all of your official travel expenses to attend a meeting of mutual interest, or any portion of those travel expenses mutually agreed upon between your agency and the non-Federal source. You may not accept payments for travel that is not to attend a meeting under this part. However, you may be able to accept payments under other authorities (see §304-3.19).

**§304-3.5 May I solicit payment of my travel expenses from a non-Federal source to attend a meeting?**

No, you may not solicit payment for travel expenses from a non-Federal source to attend a meeting.

**§304-3.6 May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting?**

Yes, you or your agency may inform the non-Federal source of your agency's authority to accept payment for travel expenses to attend a meeting.

**§304-3.7 What must I do if I am contacted directly by a non-Federal source offering to pay my travel expenses to attend a meeting?**

If you are contacted directly by a non-Federal source offering to pay any part of your travel expenses to attend a meeting, you must inform your agency, so that the authorized agency official can determine whether to accept the payment.

**§304-3.8 Must I adhere to the provisions of the Fly America Act when I receive air transportation to a meeting furnished or paid by a non-Federal source?**

No, if the payment or ticket was paid in full directly by the non-Federal source or reimbursed to your agency by the non-Federal source, the provisions of the Fly America Act do not apply. (See §§301-10.131 through 301-10.143 of this title for the regulations implementing the Fly America Act.)

**§304-3.9 May I use other than coach-class accommodation on common carriers or other than lowest first-class accommodations on ships when a non-Federal source pays in full for my transportation expenses to attend a meeting?**

Yes, you may use other than coach-class accommodation on common carriers if you meet one of the criteria contained in §301-10.123 or §301-10.162 or you may use other than lowest first-class travel if you meet one of the criteria contained in §301-10.183 of this Title, and are authorized to do so by your agency in accordance with §304-5.5 of this Chapter

**§304-3.10 [Reserved]****§304-3.11 Am I limited to the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?**

Generally yes. Subsistence expenses are usually limited to the maximum subsistence allowances (per diem, actual expenses or conference lodging) prescribed in Chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas and by the Secretary of State for travel in foreign areas. However, acceptance of payment for, and when applicable, reimbursement by an agency to an employee and the accompanying spouse of such employee are not subject to the maximum per diem or actual subsistence expense rates when traveling in CONUS or in non-foreign areas under the following conditions:

(a) The non-Federal source pays the full amount of the subsistence expense, as authorized by your agency; and

(b) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by other meeting attendees; and

(c) Your agency has approved acceptance of payment from the non-Federal source prior to your travel; if your agency has not approved any acceptance from the non-Federal source, you may not exceed the maximum allowances. See [§304-3.13](#).

**Note:** The maximum subsistence allowances established by the Secretary of State for travel to foreign areas may not be exceeded.

#### **§304-3.12 Must I receive advance approval from my agency before I perform travel paid by a non-Federal source to attend a meeting?**

Yes, you must receive advance approval from your agency before performing travel paid by a non-Federal source to attend a meeting except as provided in [§304-3.13](#).

#### **§304-3.13 After I begin travel to a meeting, what should I do if a non-Federal source offers to pay for one or more of my travel expenses without my or my agency's prior knowledge?**

(a) If your agency has already authorized acceptance of payment for some of your travel expenses for that meeting from a non-Federal source, then you may accept on behalf of your agency, payment for any of your additional travel expenses from the same non-Federal source as long as—

(1) The expenses paid or provided in kind are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and

(2) Your agency did not decline to accept payment for those particular expenses in advance of your travel.

(b) If your agency did not authorize acceptance of any payment from a non-Federal source prior to your travel, then—

(1) You may accept, on behalf of your agency, payment from a non-Federal source as authorized in this section—

(i) Only the types of travel expenses that are authorized by your travel authorization (i.e., meals, lodging, transportation, but not recreation or other personal expenses); and

(ii) Only travel expenses that are within the maximum allowances stated on your travel authorization (e.g., if your travel authorization states that you are authorized to incur lodging expenses up to \$100 per night, you may not accept payment from the non-Federal source for a \$200 per night hotel room);

(2) You must request your agency's authorization for acceptance from the non-Federal source within 7 working days after your trip ends; and

(3) If your agency does not authorize acceptance from the non-Federal source, your agency must either—

(i) Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided, not to exceed the maximum allowance stated on your travel authorization; or

(ii) Require you to reimburse the non-Federal source that amount and allow you to claim that amount on your travel claim for the trip.

(c) If you accept payment from a non-Federal source for travel expenses in violation of [paragraph \(a\)](#) or [\(b\)](#) of this section, you may be subject to the penalties specified in [§304-3.18](#).

#### **§304-3.14 May a non-Federal source pay for my spouse to accompany me to a meeting?**

Yes, a non-Federal source may pay for your spouse to accompany you when it is in the interest of and authorized in advance by your agency. All limitations and requirements of this part apply to the acceptance of payment from a non-Federal source for travel expenses and/or agency reimbursement of travel expenses for your accompanying spouse. Your agency may determine that your spouse's presence at an event is in the interest of the agency if your spouse will—

(a) Support the mission of your agency or substantially assist you in carrying out your official duties;

(b) Attend a ceremony at which you will receive an award or honorary degree; or

(c) Participate in substantive programs related to the agency's programs or operations.

#### **§304-3.15 Must I provide my agency with information about any payment I receive on its behalf?**

Yes. Your agency must submit to the U.S. Office of Government Ethics (OGE) a semiannual report (SF 326) of all payments it accepts under this part. You must be prepared to give your agency the information it needs in order to submit its report.

### **Subpart B—Reimbursement Claims**

#### **§304-3.16 What must I submit to my agency for reimbursement when a non-Federal source pays all or part of my travel expenses to attend a meeting?**

You must submit a travel claim listing all allowable travel expenses that you incurred which were not paid in kind by a non-Federal source. Do not claim travel expenses that were furnished in kind by a non-Federal source. Your reimbursement is limited to the types of expenses authorized in [Chapter 301](#) of this title or analogous provisions of the Joint Travel Regulations or Foreign Affairs Manual. Reimbursement from your agency for expenses will not in any case exceed the amount of the expenses you incur. Such reim-

busement will also adhere to established regulatory limitations except where your agency accepts payments under [§304-5.4](#), [304-5.5](#) or [304-5.6](#) of this chapter.

## **Subpart C—Reports**

### **§304-3.17 If I am required to file a confidential or public financial disclosure report, must I report travel payments I receive from a non-Federal source on that report?**

Generally, no. As long as payments you receive from a non-Federal source are made to or on behalf of your agency, you are not required to report them as gifts on any confidential or public disclosure report you are personally required to file pursuant to law or Office of Government Ethics (OGE) regulations (5 CFR part 2634). However, you may be required to report any such payments that you and/or your accompanying spouse receive on your own behalf, rather than on the agency's behalf, pursuant to other reporting requirements (e.g., those required by the Ethics in Government Act of 1978).

**Note:** The confidential financial disclosure report is OGE Form 450 and the public financial disclosure report is SF 278.

## **Subpart D—Penalties**

### **§304-3.18 What happens if I accept a payment from a non-Federal source that is in violation of this part?**

If you accept payment from a non-Federal source in violation of this part—

(a) You may be required, in addition to any other penalty provided by law and applicable regulations, to pay the general fund of the Treasury, an amount equal to any payment you accepted; and

(b) In the case of reimbursement under [paragraph \(a\)](#) of this section, you will not be entitled to any reimbursement from the Government for your travel expenses that the payment was intended to cover.

## **Subpart E—Relation to Other Authorities**

### **§304-3.19 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?**

Yes, you may also accept payment of travel expenses from a non-Federal source under the following authorities, in addition to this part:

(a) Under 5 U.S.C. 4111 for acceptance of contributions, awards, and other payments from tax-exempt entities for non-Government sponsored training or meetings (see regulations issued by the Office of Personnel Management at 5 CFR part 410).

(b) Under 5 U.S.C. 7342 for travel taking place entirely outside the United States which is paid by a foreign government, where acceptance is permitted by your agency and any regulations which may be prescribed by your agency.

(c) Under 5 U.S.C. 7324(b) when payment is for travel to be performed for a partisan rather than an official purpose in accordance with the Hatch Act (5 U.S.C. 7321-7326); or

(d) Pursuant to the applicable standards of ethical conduct regulations concerning personal acceptance of gifts. For example, under 5 CFR 2635.204(e), which authorizes executive branch employees to accept gifts based on outside business employment relationships. (**Note:** You may also be able to accept attendance at (but not other travel expenses to) a widely attended gathering under 5 CFR 2635.204(g)(2) when the gathering is not a meeting, as defined in this part, and you are not attending in your official capacity.)

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## **SUBCHAPTER B—AGENCY REQUIREMENTS**

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## **PART 304-4—AUTHORITY**

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 1353.

### **§304-4.1 To whom do the pronouns “we”, “you”, and their variants refer throughout this part?**

Use of pronouns “we”, “you”, and their variants throughout this part refers to the agency.

### **§304-4.2 What is the purpose of this part?**

The purpose of this part is to establish Governmentwide policy and guidance for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings under 31 U.S.C. 1353. It prescribes how such payments may be accepted.

### **§304-4.3 Under what other authority may we accept payment for travel expenses from a non-Federal source?**

You may accept payment for travel expenses to events other than meetings from a non-Federal source pursuant to an

agency gift statute or similar statutory authority. However, this [Chapter 304](#) is the only authority you may use to accept (or authorize your employee to accept on your behalf) payment for travel expenses from a non-Federal source to attend a meeting. For example, you could not pay the travel expenses for an employee to attend a meeting and then authorize the employee to use the widely attended gathering exception in 5 CFR 2635.204(g)(2) to accept free attendance at that same meeting. You would only be able to accept payment for the employee’s attendance at that meeting under this [Chapter 304](#).

**Note:** Employees may also be able to accept payment for travel expenses from non-Federal sources in their individual capacities under the authorities referenced in [§304-3.19](#).

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**PART 304-5—AGENCY RESPONSIBILITIES**

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 1353.

**§304-5.1 When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?**

You may accept payment from a non-Federal source or authorize an employee and/or the employee's spouse to accept payment on your behalf only when—

- (a) You have issued the employee (and/or the employee's spouse, when applicable) a travel authorization before the travel begins;
- (b) You have determined that the travel is in the interest of the Government;
- (c) The travel relates to the employee's official duties; and
- (d) The non-Federal source is not disqualified due to a conflict of interest under [§304-5.3](#).

**§304-5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?**

An official at the highest practical administrative level who can evaluate the requirements in [§304-5.3](#), must approve acceptance of such payments.

**§304-5.3 What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?**

(a) The approving official must not authorize acceptance of the payment if he/she determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. The approving official must be guided by all relevant considerations, including but not limited to the—

- (1) Identity of the non-Federal source;
  - (2) Purpose of the meeting;
  - (3) Identity of other expected participants;
  - (4) Nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source;
  - (5) Significance of the employee's role in any such matter; and
  - (6) Monetary value and character of the travel benefits offered by the non-Federal source.
- (b) The agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the

event or limiting the type or character of benefits that may be accepted.

**§304-5.4 May we authorize an employee to exceed the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in applicable travel regulations where we have authorized acceptance of payment from a non-Federal source for such allowances?**

(a) Generally, yes. Subsistence allowances are usually limited to the maximum subsistence allowances (per diem, actual expense, or conference lodging) prescribed in [Chapter 301](#) of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas, and by the Secretary of State for travel in foreign areas. However, the maximum subsistence allowances established by this title and by the Secretary of Defense may be exceeded as long as—

- (1) The non-Federal source pays the full amount of the subsistence expenses, at issue; and
- (2) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by meeting attendees.
- (b) The maximum subsistence allowances prescribed by the Secretary of State for travel to foreign areas may not be exceeded.

**§304-5.5 May we authorize an employee to travel by other than coach-class on common carriers or other than lowest first-class on ships if we accept payment in full from a non-Federal source for such transportation expenses?**

Yes, you may authorize an employee to travel by other than coach-class on common carriers or other than lowest first-class on ships as long as the:

- (a) Non-Federal source makes full payment for such transportation services in advance of travel; and
- (b) Transportation accommodations furnished are comparable in value to those offered to, or purchased by other similarly situated meeting attendees; and
- (c) Travel meets at least one of the conditions in [§§301-10.123](#), [301-10.162](#) and [301-10.183](#) of this Title.

**§304-5.6 May we authorize acceptance of payment from more than one non-Federal source for a single trip?**

Yes, you may accept payment from more than one non-Federal source for a single trip, as long as the total of such payments do not exceed the total cost of the trip.

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## PART 304-6—PAYMENT GUIDELINES

**Authority:** 5 U.S.C. 5707; 31 U.S.C. 1353.

### Subpart A—General

#### §304-6.1 May we accept a monetary payment in the form of cash from a non-Federal source?

No, you may not accept a monetary payment in the form of cash from a non-Federal source. Monetary payment(s) received from a non-Federal source must be in the form of a check or similar instrument made payable to the agency.

#### §304-6.2 What should we do if a non-Federal source does not pay the full cost for expenses that an employee will incur during travel?

If you determine in advance of the employee's travel that payment from a non-Federal source will cover some but not all of the employee's allowable travel and subsistence expenses you should state on the employee's travel authorization that the employee will be reimbursed the difference between the full allowances and the payment from the non-Federal source. See [Chapter 301](#) of this Title, 6 Foreign Affairs Manual, Chapter 100, or the Joint Travel Regulations (JTR), Chapter 4, Parts L and Q, as applicable to determine the applicable maximum allowances.

#### §304-6.3 What happens if an employee accepts payment from a non-Federal source that is in violation of this part?

If an employee accepts payment from a non-Federal source in violation of this part—

(a) You may require the employee, in addition to any penalty provided by law and applicable regulations, to pay the general fund of the Treasury, an amount equal to the payment so accepted; and

(b) The employee shall not be entitled to any reimbursement from the Government for such expenses.

### Subpart B—Reports

#### §304-6.4 What form must we use to report payments received by the agency from non-Federal sources?

Your agency head or designee must submit Standard Form (SF) 326, Semiannual Report of Payments Accepted From a Non-Federal Source (fully completed) to report payments received from non-Federal sources. This applies to all payments that are more than \$250 per event for an employee and accompanying spouse. For purposes of the \$250 threshold, payments for an employee and accompanying spouse shall be aggregated. If you wish to use a form other than SF 326 to report such payments, you may seek permission to do so by contacting the Office of Government Ethics at

United States Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917.

#### §304-6.5 What guidelines must we follow when using the Standard Form (SF) 326?

When completing the SF 326—

(a) You must fully complete each block on SF 326 without exception (including payments accepted for an accompanying spouse).

(b) You must also—

(1) Submit the SF 326 no later than May 31 for payments received from the preceding October 1 through March 31;

(2) Submit a SF 326 no later than November 30 for payments received from the preceding April 1 through September 30; and

(c) Submit the SF 326 including negative reports, to: Director of the Office of Government Ethics (OGE), 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917.

### Subpart C—Valuation

#### §304-6.6 How do we determine the value of payments in kind that are to be reported on Standard Form (SF) 326?

The following should be used in the determination of the value of payments in kind for reporting on SF 326:

(a) For conference, training, or similar fees waived or paid by a non-Federal source, you must report the amount charged other participants.

(b) For transportation or lodging, you must report the cost that the non-Federal source paid or usually would have been charged for such event.

(c) For meals or other benefits that are not provided as part of the transportation, lodging, or a conference, training or similar fee, you must report the cost to the non-Federal source or provide a reasonable approximation of the market value of the benefit.

(d) For chartered, corporate or other private aircraft—

(1) When common carrier is available, you must report the first-class rate that would have been charged by a commercial air carrier at the time the event took place.

(2) When a common carrier is not available, you must report the cost of chartering a similar aircraft using a commercially available service.

(e) Lodging where no commercial rate is available: You must report the maximum lodging rate established by GSA for CONUS, Department of Defense for non-foreign areas and the Secretary of State for foreign areas. These rates are available on the Internet at the GSA Web site <http://>

[www.gsa.gov/perdiem](http://www.gsa.gov/perdiem), with links to the non-foreign and foreign area rates.

**§304-6.7 Must we report on the Standard Form (SF) 326 any information that is protected from disclosure by statute?**

No. Information that is protected by statute from disclosure to the public should not be reported on the SF 326. However, if you omit otherwise reportable information from the SF 326 because the information may not be disclosed, you must notify OGE unless otherwise prohibited by law and, if requested by the Director of OGE, make the information available for inspection by an OGE employee with the requisite clearance.

**§304-6.8 Will the reports be made available for public inspection?**

Yes, OGE must make any report filed by an agency under this part (that is not protected from disclosure by statute)

available for public inspection and copying on the later of the following two dates:

- (a) Within 30 days after the applicable due date.
- (b) Within 30 days after the date OGE actually receives the report.

**§304-6.9 Does acceptance by OGE of the Standard Form (SF) 326 constitute a determination by OGE that the data submitted is adequate or a concurrence by OGE in the agency's conflict of interest analysis?**

No. OGE is responsible for making the information provided by the agencies available to the public. It is each agency's responsibility to file the accurate and complete reports and to make the appropriate conflict of interest analysis.

**SUBCHAPTER C—ACCEPTANCE OF PAYMENTS FOR TRAINING**

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## **PART 304-7—AUTHORITY/APPLICABILITY**

**Authority:** 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

### **§304-7.1 What is the purpose of this subchapter?**

The purpose of this subchapter is to provide for reductions in per diem and other travel reimbursement when employees receive contributions, awards and other payments from non-Federal sources for training in non-Government facilities and attendance at meetings under 5 U.S.C. 4111.

### **§304-7.2 To whom does this subchapter apply?**

This subchapter applies to—

- (a) Civilian officers and employees of—
  - (1) Executive departments as defined in 5 U.S.C. 101;
  - (2) Independent establishments as defined in 5 U.S.C. 104;
  - (3) Government corporations subject to chapter 91 of title 31 U.S.C.;
  - (4) The Library of Congress;

- (5) The Government Printing Office (GPO);
- (6) The government of the District of Columbia; and
- (b) Commissioned officers of the National Oceanic and Atmospheric Administration.

### **§304-7.3 Who is exempt from this subchapter?**

The following, under 5 U.S.C. 4102 and the implementing regulation at 5 CFR 410.101(b), are exempt from this subchapter:

- (a) A corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors.
- (b) The Tennessee Valley Authority.
- (c) An individual (except a commissioned officer of the National Oceanic and Atmospheric Administration) who is a member of a uniformed service during a period in which he is entitled to pay under 37 U.S.C. 204.
- (d) The U.S. Postal Service, Postal Rate Commission and their employees.

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**PART 304-8—DEFINITIONS**

**Authority:** 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

**§304-8.1 For the purpose of this subchapter, who is a donor?**

A donor, for the purpose of this subchapter, is a non-profit charitable organization described by 26 U.S.C. 501(c)(3), that is exempt from taxation under 26 U.S.C. 501(a).

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## **PART 304-9—CONTRIBUTIONS AND AWARDS**

**Authority:** 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

### **§304-9.1 To whom do the pronouns “I”, “you”, and their variants refer throughout this part?**

Use of pronouns “I”, “you”, and their variants throughout this part refers to the agency.

### **§304-9.2 May we allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings under this subchapter?**

Yes, you may allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings when you specifically authorize them to do so in accordance with OPM guidelines issued under section 401(b) of Executive Order 11348 (see 5 CFR part 410) and section 303(j) of Executive Order 11348 (3 CFR, 1966–1970 Comp., p. 639). The OPM guidelines may be found at 5 CFR 410.501 through 410.503.

### **§304-9.3 May we pay an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting?**

No, you may not reimburse an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting.

### **§304-9.4 May we reimburse an employee for training expenses that are not fully paid by a donor?**

Yes, you may reimburse an employee for training expenses that are not fully paid by a donor an amount considered sufficient to cover the balance of expenses to the extent authorized by law and regulation, including 5 U.S.C. 4109 and 5 U.S.C. 4110.

### **§304-9.5 What if the employee is compensated by a donor and by us for the same expenses?**

If you reimburse an employee for expenses that are also paid by a donor, you must establish and carry out policy in accordance with 5 U.S.C. 5514 and the Federal Claims Collection Standards (31 CFR parts 900-904) to recover any excess amount paid to the employee.

### **§304-9.6 Must we reduce an employee's reimbursement when a donor pays for items for which we are not authorized to reimburse the employee?**

No, when a donor pays for travel expenses that the Government is not authorized to pay (such as travel expenses for an employee's family) no reduction in reimbursement to the employee is required.

### **§304-9.7 Must we obtain data from employees or donors for all expenses received?**

Yes, you must set agency policy to ensure collection of expense data in such detail as you deem necessary to carry out this part.

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## **MEDICAL TELEWORK REQUIREMENTS CHECKLIST**

Medical Telework is treated differently than “Regular” or “Episodic” Telework as it has several additional requirements that must be provided prior to this being authorized.

***NOTE: Medical Telework is offered in support of a medical condition of the FEMA “employee” and is not available to support the medical condition of a family member. The only program that offers support for medical conditions for a family member is FMLA.***

Please attach the documents required below PRIOR TO authorization for Medical Telework:

- Telework Application & Agreement noting “Situational” and write “Medical” next to that term, signed by employee, immediate supervisor, and initialed by Section Manager
- Telework Employee Checklist signed by employee, immediate supervisor, and initialed by Section Manager
- Telework Training Certificate
- Medical documentation on the medical professional’s letterhead, stating:
  1. the medical necessity for the request;
  2. the need to work from home or Telework;
  3. the duration of the request (specify begin and end dates);
  4. number of hours per day and days per week you are able to Telework;
  5. note any restrictions or limitations while Teleworking.

Once these documents are attached to this form, give the completed package to your Section Manager for processing. These documents will be kept in your secured Medical Telework file. These documents only support your Medical Telework request and not “Regular” or “Episodic” Telework, FMLA or Reasonable Accommodations.

***Already have a “Regular” or “Episodic” Telework Packet in place?*** In such cases, the only documents needed are: (1) a new Telework Application and Agreement noting the dates for the Medical Telework period; and (2) medical documentation (see details above for info needed). Once the period for this Medical Telework has expired, you may resume your previously approved Telework schedule.

Do you need additional equipment? If so, please specify:

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Employee Name

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Section/Department

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Date



March 8, 2019

MEMORANDUM FOR: Max Meindl  
Program Delivery Manager | Houston TRO  
DHS | FEMA-Recovery Directorate  
Public Assistance Division

FROM: Jamie McAllister  
Deputy Infrastructure Branch Director  
DR 4332 TX JFO Austin  
Region 6 Infrastructure Branch  
DHS/FEMA

SUBJECT: Request for To Telework

This serves to deny your reasonable accommodation request for episodic telework dated November 26, 2018.

As your Supervisor of Record (SOR), I reviewed your signed 256 Form, and medical documentation submitted in support of your request to telework as a reasonable accommodation.

In order for a reasonable accommodation to be provided, it must first be determined that the individual making the request is a qualified individual with a disability. A qualified individual defined is as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

42 U.S. Code § 12102 defines the term "disability" with respect to an individual as:

- (A) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

The EEOC defines a reasonable accommodation as any change in the workplace or in the way things are customarily done that provides an equal employment opportunity to an individual with a disability when an employee with a disability needs an accommodation to perform the essential functions of the job held.

The EEOC defines essential functions as those job duties that are fundamental to the position that the individual holds or desires. According to the EEOC, evidence of whether a particular function is



essential includes the agency's judgment (generally a supervisor's, manager's and/or office director's judgment), and a written position description developed before a job is advertised.

The job announcement for the Cadre of On-call Response/Recovery Employee (CORE) position states:

*"All candidates must be able to deploy with little or no advance notice to anywhere in the United States and its territories for an extended period of time. Deployments may include working in excess of eight hours a day, or in excess of 40 hours per week, including weekends and holidays, and under stressful, physically demanding, and austere conditions."*

In *Demyanovich v. Cadon Plating and Coatings, LLC*, 747 F.3d 419 (6th Cir. 2014), the court found that "a written job description and the employer's judgment constitute evidence of whether a particular job function is essential". At the Texas Recovery Office Public Assistance Cadre (TRO PA) telework is not allowed for emergency management employees outside of very limited weather-related cases. Management has determined it is an essential job function to travel to the office and visit applicants in person at their office location.

Further, pursuant to 29 U.S.C. § 701 et seq., the Rehabilitation Act of 1973, an employer is not required to eliminate an essential function of a position in response to a request for reasonable accommodation. Also, see (*Minnihan v. Mediacom Commc'n Corp.*, 779 F.3d 803 (8th Cir. 2015)). Your request to telework would require removal of an essential job function. The appropriate accommodation would be a reassignment to a position that allows telework. Should you choose to appeal the SOR's decision, you may do so using the following procedure:

**Request for reconsideration:**

If an individual wishes to request reconsideration of this decision, she/he must take the following steps:

An employee may appeal directly to his/her Second Level Supervisor. The employee may present additional information in support of his/her request.

An applicant may appeal directly to the Disability Employment Program Manager of the Office of Equal Rights. The applicant may present additional information in support of his/her request.

If an individual wishes to file an EEO Complaint, or to pursue MSPB or union grievance procedures, she/he must take the following steps:

For an EEO complaint pursuant to 29 C.F.R. 1614, contact an EEO Counselor in the Office of Equal Rights within 45 days from the date of this denial of reasonable accommodation; or



For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or

Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3

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**Jamie McAllister, Deputy IBD**

Name & Title of Deciding Official

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Signature of Deciding Official

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Date

**Acknowledgement of Receipt:**

*Please sign the acknowledgement of receipt below. Your signature does not indicate agreement with this decision, and by signing, you do not forfeit any of your rights cited above. Your signature only represents your receipt of this decision on the date signed.*

---

Max Meindl

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DATE

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OAS 5770.1  
January 28, 2015

GSA ORDER

SUBJECT: Local Travel

1. Purpose. To provide guidance on the reimbursement of transportation expenses incurred on official business within the local area of an employee's official worksite/duty station or appropriate alternative worksite.
2. Background. While the Federal Travel Regulation (FTR) regulates expense reimbursement for temporary duty (TDY) travel away from the official station for GSA employees, it does not provide guidance for local travel expense reimbursement. Also, due to new policies, such as telework, the scope of local travel must be clarified.
3. Scope and applicability. This directive provides guidance for reimbursing transportation expenses incurred on official business performed near a GSA employee's official worksite/duty station. Non-GSA employees who perform local travel at the request of GSA may be reimbursed as provided by their contract or inter- and intra-government agreement, as applicable. Reimbursement to non-GSA employees will be processed through the financial system, not the e-Gov Travel System (ETS).
4. Cancellation. This directive cancels chapter 7 of PFM P 4290.1 GSA Internal Travel Regulations and Control of Official Travel, dated August 24, 2004 (as extended).
5. Revisions. This directive limits the reimbursement of local travel expenses to the amount that exceeds an employee's daily commuting costs. It also defines "commuting expense."
6. Responsibilities. The Travel Policy and Charge Card Program Office (H1BB) develops local travel policy for GSA employees. Regional offices may supplement this policy, but regional policy may not change or conflict with official policy. Regional policy must be cleared by H1BB.
7. Signature.

/S/  
\_\_\_\_\_  
CYNTHIA A. METZLER  
Chief Administrative Services Officer  
Office of Administrative Services

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## LOCAL TRAVEL

1. Policy. Reimbursement for transportation expenses incurred by a GSA employee performing official duties near his/her worksite/duty station<sup>1</sup> will be limited to the amount that exceeds the employee's round-trip regular commuting costs, even if that commute is not performed every day.
2. Definition of local travel. Local travel is travel necessary to conduct official GSA business and is performed by the most direct route within and adjacent to an employee's official worksite/duty station or appropriate alternative worksite. The proximity of travel to the employee's official worksite/duty station determines whether expenses are reimbursed as local travel expenses, as described in this policy, or as TDY travel expenses, as described in the FTR. Local travel does not include any official travel that is part of a TDY travel authorization, including travel to a common carrier terminal in the employee's local travel area in conjunction with TDY.
3. Commuting expenses. Commuting expenses are costs incurred while traveling between an employee's residence and his/her official worksite/duty station. Commuting expenses are calculated on a daily basis and are based on the method of transportation used for that day's commute. For example, if an employee purchases a monthly bus pass, but chooses to drive on the day he or she conducts local travel, the employee may be reimbursed for driving expenses (e.g., mileage, parking, tolls), that exceed the normal commuting costs of driving from his or her residence to the official station. When computing the amount for reimbursement, expenses are considered individually, rather than in aggregate, so that all excess mileage, tolls, and parking fees are reimbursed even if certain expenses are less than normal commuting costs. The cost of the pro-rated "unused" bus pass is not a reimbursable expense.
4. Mass transit subsidies. The GSA Fare Subsidy Program offers qualifying employees a financial incentive to use mass transit and other options for commuting to and from work in an effort to reduce traffic congestion and dangerous pollutants in metropolitan areas. GSA employees who commute by public transportation, including subway, bus, train, or qualified vanpool, may receive "transit passes" or "fare media" through the program. The subsidy is only intended to cover the costs of commuting to an

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<sup>1</sup> [HCO 6040.1A GSA Mobility and Telework Policy](#) paragraph 6d defines the official worksite/duty station as "the location where the employee regularly performs his or her official work duties .... Designation ... must be determined on a case-by-case basis using the following considerations:

- (1) The official worksite is the ... place where the employee would normally work if not teleworking - as long as the employee is scheduled to report physically at least twice each biweekly pay period to that Agency worksite;
- (2) The official worksite for an employee who is not scheduled to report at least twice a biweekly pay period to the Agency worksite (includes virtual workers/full time teleworkers) is the location of the appropriate alternative worksite (except in certain temporary duty situations);
- (3) The official worksite for an employee whose work location varies on a recurring basis (mobile work), and who does not report at least twice each biweekly pay period to the Agency worksite, is the Agency worksite, as long as the employee is performing work within the same geographic area (established for the purpose of a given pay entitlement) as the Agency worksite."

employee's official worksite/duty station and return to home. It is not intended to pay for local travel to/from/between other places of official business, such as travel to an offsite meeting location.

5. Local travel areas.

a. Central Office employees.

(1) The local travel area for Central Office employees whose official worksite/duty station is in the Washington, DC metropolitan area has been established as follows: The District of Columbia, the cities of Alexandria, Fairfax, and Falls Church in Virginia; Arlington and Fairfax Counties in Virginia; and Montgomery and Prince George's Counties in Maryland.

(2) For Central Office employees whose official worksite/duty station is located in a regional office, excluding the National Capital Region office (e.g., satellite employee), the local travel area is established by the respective Regional Administrator.

b. Regional employees. Regional Administrators (RAs) will determine their region's local travel area. RAs may use a mileage radius, the corporate limits of the city or town, or the usual commuting area of the official worksite/duty station (area served by local transportation services such as buses, streetcars, subways and trains). No part of the area, however, can be more than 50 miles from where the employee regularly performs his/her duties or from an invitational traveler's residence or regular place of business.

c. Full-time telework employees. Employees who telework full-time will have a local travel area of 50 miles from their residence or other appropriate alternative worksite designated as their official worksite/duty station. ([HCO 6040.1A GSA Mobility and Telework Policy.](#))

6. Travel authorization. A written or electronic travel authorization will not be issued for travel solely within an employee's local travel area.

7. Government contractor-issued travel charge card. Travel charge cards will not be used to pay for expenses unrelated to official TDY travel, including local travel, except for situations of imminent danger to human life or Federal property.

8. Tokens, tickets and passes. In areas where mass transit services are available (subways, buses, etc.), offices should obtain tokens, tickets, and/or passes in advance with a purchase card ([OAS 4200.1A Management and Use of the GSA SmartPay® Purchase Card](#)), to eliminate the need for reimbursing these costs via a local travel voucher. Offices should establish procedures to prevent inappropriate use of these items.

9. Local transportation expenses. Based on cost and other factors (e.g., distance traveled, number of travelers, urgency), employees should select the method of travel

most advantageous to the Government. Otherwise, reimbursement will be limited to the constructive amount of using the most advantageous method of travel (see examples in Appendix).

- a. Government-owned automobile (GOA). A GOA must be used for local travel whenever available and most advantageous to the Government.
- b. Privately owned vehicle (POV). Local travel via POV will be reimbursed based on the actual distance traveled (as shown on the odometer), minus the employee's normal round-trip commuting distance/expenses, times the applicable mileage rate on <http://www.gsa.gov/mileage>. POVs include privately owned automobiles (POA), privately owned motorcycles, and privately owned airplanes. Reimbursement will be limited to the GOA rate when a GOA was available and advantageous to the Government, but a POA is used due to the personal choice of the employee instead.
- c. Mass transit services. Travel between places of business via bus, subway, ferry, streetcar, etc., may be reimbursed as a transportation expense.
- d. Tolls, fares, etc. Parking, ferry fares, and tolls may be reimbursed as a transportation expense when their use is determined to be necessary and advantageous to the Government.
- e. Taxicab.

(1) A taxicab may be used if advantageous to the Government and necessary for urgent business. Taxicabs may also be authorized for local travel between an employee's office and residence if the employee depends on public transportation to perform official duties and he/she is directed to work outside of his/her regular hours and the local travel occurs during darkness or hours of infrequently scheduled public transportation.

- (2) Reimbursement is limited to taxicab fare for the usually traveled route plus tip (maximum 15% rounded up to the next dollar).
- (3) Receipts are required for any single taxicab fare (including tip) that exceeds \$25.

## 10. Per diem.

- a. Prohibition. No per diem or actual subsistence expense allowance (lodging or meals) will be paid for travel within an employee's local travel area.
- b. Exception for protection of human life or Federal property. The Administrator of General Services or his/her designee may authorize reimbursement of subsistence/per diem expenses for an employee who must remain at his/her official worksite/duty station or appropriate alternative worksite due to imminent danger to human life or Federal

property, and as a result, incurs lodging and/or meal expenses. The Administrator or his/her designee must authorize in writing the need to incur subsistence/per diem expenses and the employee must then upload this authorization into the e-Gov Travel System (ETS) and request reimbursement. The reimbursement will be processed on a local voucher as a miscellaneous expense. As situations permit, contact the Office of General Counsel in writing for additional guidance before incurring any expense that may be covered by this exception.

**11. Claiming reimbursement.**

- a. Approving officials must review claims for accuracy before approval. Relevant factors include mode of transportation utilized, distance traveled, and the amount that exceeds the employee's commuting costs. The approval official must ensure that the mode of transportation used was more advantageous to the Government than other available modes of transportation.
- b. Claims must be filed on an ETS local voucher ([travel.gsa.gov](http://travel.gsa.gov)).
- c. Claims should be filed monthly or when the amount for reimbursement exceeds \$25. If required, however, claims may be filed sooner.
- d. When travel involves two or more GSA employees on official business, one employee should pay and claim the entire expense (e.g., taxicab fare, bridge toll, etc.).
- e. All taxicab fare receipts exceeding \$25 and any other local travel expense receipt exceeding \$75 must be attached to the ETS voucher.
- f. Employees must explain all taxicab use described in paragraph 9(e)(1). That explanation must include the employee's departure time from the office and justification for use of the taxicab.

## Appendix. Local Travel Scenarios

This Appendix applies GSA's local travel policy to real-life scenarios. Each scenario explains and calculates an employee's local travel and commuting expenses, and if applicable, the reimbursement amount. All mileage rates used below are examples only. Current mileage reimbursement rates are posted at [www.gsa.gov/mileage](http://www.gsa.gov/mileage). The scenarios also explain how different facts would affect reimbursement calculations.

**Scenario 1.** Sarah commutes 15 miles (one-way) to her official worksite and incurs a \$20 daily parking fee. On the day of local travel she reports to her official worksite in her privately owned automobile (POA) and incurs a \$10 short-term parking fee before driving 10 miles to an off-site meeting where she incurs another \$10 parking fee. After the meeting, she drives 25 miles to her home. Assuming a rate of 55.5 cents/mile when a POA is most advantageous, what is her reimbursable local travel expense?

Expense Description	Day's Expenses	Commuting Expenses	Reimbursable Expenses
Mileage	50 miles	30 miles	20 miles
Parking	\$20	\$20	\$0

**Reimbursement:** 20 miles x 55.5 cents/mile = **\$11.10**

**Explanation 1.** Sarah would be reimbursed for the 20 additional miles. The \$10 parking fee incurred at the meeting, however, is not reimbursable because it does not exceed her normal parking expenses usually incurred as part of her commute. If she had been required to return to her official worksite, and as a result, incurred additional mileage and parking expenses before going home, the additional mileage would be reimbursed. The additional parking would also be reimbursed, if it exceeded her normal \$20 parking expenses.

**Scenario 2.** Same as scenario 1, but Sarah chooses to use her POA when a GOA is available and most advantageous to the Government, and returns to the office to do work, incurs another \$10 parking fee and then goes home for the day. Assuming a rate of 55.5 cents/mile when a POA is most advantageous, and a rate of 24 cents/mile when a GOA is most advantageous but a POA is used instead, what is her reimbursable local travel expense?

Expense Description	Day's Expenses	Commuting Expenses	Reimbursable Expenses
Mileage	50 miles	30 miles	20 miles
Parking	\$30	\$20	\$10

**Reimbursement:** \$4.80 (20 miles x 24 cents/mile) + \$10 = **\$14.80**

**Explanation 2.** Like explanation 1, Sarah would be reimbursed the additional 20 miles, but since she failed to use an available and advantageous GOA, her reimbursement would be limited to the reduced rate. Unlike explanation 1, Sarah would be reimbursed for the additional parking since her \$30 parking expenses exceed her normal \$20 parking expenses.

**Scenario 3.** Bob teleworks full-time. For personal reasons, he drives 15 miles to a local coffee shop to perform his work.

Expense Description	Day's Expenses	Commuting Expenses	Reimbursable Expenses
Mileage	15 miles	0 miles	0 miles
Parking	\$0	\$0	\$0

**Reimbursement:** \$0

**Explanation 3.** As a full-time telework employee, Bob's residence is his official worksite. Since Bob was not required to perform his official duties at the coffee shop, the costs incurred while traveling there are personal expenses and are not reimbursable.

**Scenario 4.** Julie is a full-time telework employee. She is required to attend a meeting 45 miles round-trip from her home. Julie drives her POA, which is most advantageous to the Government in this case, to and from the meeting location. Julie incurs two \$5 tolls on her EZ Pass and a \$10 parking fee at the meeting location. What is Julie's reimbursable local travel expense?

Expense Description	Day's Expenses	Commuting Expenses	Reimbursable Expenses
Mileage	45 miles	0 miles	45 miles
Tolls	\$10	\$0	\$10
Parking	\$10	\$0	\$10

**Reimbursement:** \$24.98 (45 miles x 55.5 cents/mile) + \$10 + \$10 = \$44.98

**Explanation 4.** As a full-time telework employee, Julie's official worksite is her home. Since Julie was required to leave her home to perform her official duties at the meeting, the costs incurred traveling to the meeting, as well as the parking fee are reimbursable.

**Scenario 5.** Typically, Ken commutes 75 miles round-trip to his worksite/duty station via van pool. The van pool costs \$175 per month (\$125 paid with his transit subsidy and \$50 paid out of pocket). Ken is directed to attend a meeting near his worksite/duty

station. Ken drives to the meeting and incurs a \$10 parking fee. After the meeting he stops by the office to do some work and incurs another \$10 parking fee. Ken then returns home at the end of the day, driving a total of 100 miles. What is his reimbursable local travel expense?

Expense Description	Day's Expenses	Commuting Expenses	Reimbursable Expenses
Mileage	100 miles	75 miles	25 miles
Parking	\$20	\$10	\$10

**Reimbursement:**  $\$13.88 \text{ (25 miles x 55.5 cents/mile)} + \$10 = \underline{\$23.88}$

**Explanation 5.** When an employee uses a mode of transportation for commuting that is different from what he/she normally uses, all normal commuting expenses associated with that mode are non-reimbursable expenses. In this scenario, since Ken chose to drive, rather than use the van pool, his reimbursement is based on his expenses associated with driving. Thus, the additional mileage and parking incurred at the meeting site are reimbursable. The round-trip mileage between Ken's home and worksite/duty station and the \$10 parking fee at the worksite, however, are non-reimbursable commuting expenses. In addition, Ken is not reimbursed for the pro-rated "unused" bus pass.

# A Guide to Telework in the Federal Government

## Introduction

Late 20<sup>th</sup>-century technology revolutionized the workplace, and the 21<sup>st</sup>-century workplace is evolving even further. Computers, remote connectivity, voice and electronic communications, paperless work processes, and other innovations make information and work increasingly mobile.

Such innovations help the Federal Government, as the Nation's largest employer, serve the needs of the American public more efficiently and effectively. Federal employees have used mobile work technology for a long time. In recent years, telework has become increasingly widespread and formalized, with legislative mandates as well as new programmatic and policy supports and structures.

The Office of Personnel Management defines telework as "work arrangements in which an employee regularly performs officially assigned duties at home or other worksites geographically convenient to the residence of the employee." Telework is simply a way of getting work done from a different location. It can serve multiple purposes – and have multiple benefits – when it is implemented effectively in an organization.

For Federal agencies, telework is of particular interest for its benefits in the following areas:

- Recruiting and retaining the best possible workforce - particularly newer workers who have high expectations of a technologically forward-thinking workplace and any worker who values work/life balance
- Helping employees manage long commutes and other work/life issues that, if not addressed, can have a negative impact on their effectiveness or lead to employees leaving Federal employment
- Reducing traffic congestion, emissions, and infrastructure impact in urban areas, thereby improving the environment
- Saving taxpayer dollars by decreasing Government real estate costs
- Ensuring continuity of essential Government functions in the event of national or local emergencies

This guide is intended to help Federal managers and employees understand how to make telework a routine part of doing business, as well as how to integrate telework into emergency planning.

## Legislative Background

For over a decade, laws addressing telework (under various names – "work at home," "flexible work," "telecommuting," etc.) have been in effect for Federal employees. The main legislative mandate for telework was established in 2000 (§ 359 of Public Law 106-346). This law states that "[e]ach executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance." Associated language in the conference report for this legislation expanded on that requirement:

*Each agency participating in the program shall develop criteria to be used in implementing such a policy and ensure that managerial, logistical, organizational, or other barriers to full implementation and successful functioning of the policy are removed. Each agency should also provide for adequate administrative, human resources, technical, and logistical support for carrying out the policy.*

Further legislation (Public Law 108-199, Division B, § 627 of January 23, 2004, and Public Law 108-447, Division B, § 622 of December 8, 2004) followed this mandate with directives to certain agencies to increase telework participation in the workforce by specified amounts.

As part of this congressional mandate, OPM began to survey Federal agencies about telework in 2000. This Call for Telework Data collects information about agency programs and participation rates.

## **Joint OPM/GSA Support**

OPM and the General Services Administration (GSA) work together to support telework in Federal agencies. The joint OPM/GSA Website [www.telework.gov](http://www.telework.gov) provides information to agencies, managers, and employees about how to effectively implement telework programs and arrangements. OPM and GSA also work directly with telework coordinators in each agency to provide guidance and assistance.

## **Definitions/Types of Telework**

The terms “telework,” “telecommuting,” “flexible workplace,” “remote work,” “virtual work,” and “mobile work” are all used to refer to work done outside of the traditional on-site work environment. These terms are defined in different ways and used in different contexts to refer to anything from jobs that are completely “virtual” or “mobile,” to arrangements that enable employees to work from home a few days per week or per month.

OPM uses the term “telework” for reporting purposes and for all other activities related to policy and legislation. OPM defines telework as “work arrangements in which an employee regularly performs officially assigned duties at home or other work sites geographically convenient to the residence of the employee.”

Telework arrangements in the Federal Government are most often part-time rather than full-time, although full-time telework does exist. Agencies may, at their own discretion, define and use the types of telework that best fit their business needs. However, for purposes of reporting and judging progress towards meeting the legislative mandate, OPM will count employees whose telework frequency is in one of the following categories only:

- Regular/recurring at least 3 days per week
- 1 or 2 days per week
- Less often than once a week, but at least once a month

### **As defined by OPM, telework is not—**

- Work extension: Many employees take work home with them. This is remote work, but it is not considered telework within the scope of the legislation.
- Mobile work: Some agencies have employees who, by the nature of their jobs, are generally off-site, and may even use their home as their “home base.” Because their

work requires this setup and they travel much of the time, they are not considered teleworkers. This is different from “hoteling” arrangements, in which frequent teleworkers use shared space when they are on-site.

Telework is not an employee right. Federal law requires agencies to have telework programs, but does not give individual employees a legal right to telework.

## **Sustaining a Successful Telework Program – A Manager’s Perspective**

### **What’s in it for me?**

#### **Compliance with the Mandate**

As described in [\*\*Legislative Background\*\*](#), telework should be implemented to the maximum extent possible.

#### **Human Capital Management Tool**

Telework, like other flexibilities, can assist managers in attracting, recruiting, and retaining the best possible workforce. In addition, by decreasing employee commute times and other work/life stressors, telework can help make employees more effective in their jobs. Telework may also be used as a reasonable accommodation for disability.

#### **Emergency Response**

Integrating work fully into an organization’s operations and culture can help maintain critical functionality in the event of an emergency.

### **The Basics**

#### **Know Your Telework Coordinator**

Each agency should designate a telework coordinator who acts as the key contact for policy and program questions. Managers should maintain frequent contact with their telework coordinator to ensure the agency’s policy and procedures are properly applied and to ensure they are aware of the full range of support and resources available to them.

#### **Know Your Policy and Procedures**

As detailed in §359 of Public Law 106-346, all agencies must have a telework policy. Managers should familiarize themselves and their employees with their agency’s policy to ensure they are in compliance with its requirements. Most agency policies will include additional procedures for establishing telework agreements, obtaining equipment, etc.

In addition, all agencies should have policies on information systems and technology security (see **Security**), and managers must ensure their equipment choices and telework agreements comply with this policy. Information security includes protection of sensitive “hard-copy” files and documents.

## Participate in Training

OPM offers online telework training for employees and managers, which can be accessed via the joint OPM/GSA Website [http://telework.gov/tools\\_and\\_resources/training/index.aspx](http://telework.gov/tools_and_resources/training/index.aspx). In addition, many agencies offer telework training, and telework coordinators are available to consult with managers.

Information technology security training, administered at the agency level, is mandatory (see **Security**), and managers must ensure teleworkers complete this training and understand their responsibilities in safeguarding work-related information.

## How To Be an Effective Telework Manager

To comply with the legislation, managers must be committed to using telework to the fullest extent possible. Beyond the basic requirements outlined above, managerial skill, participation, and support can make telework a real asset to an organization. To effectively implement a telework program, managers should accomplish the following:

### Determine Employee Eligibility

Generally, agencies have discretion to determine telework eligibility criteria for their employees. These criteria should be detailed in agency policy. Individual managers should assess who is and who is not eligible in their workgroup based on these eligibility guidelines and any applicable collective bargaining agreements. Some agencies may provide managers additional discretion in deciding whether to grant or deny a request to telework from an eligible employee, based on additional factors such as staffing or budget.

All employees are considered eligible for telework except the following:

- Employees whose positions require, on a daily basis (i.e., every work day), **direct handling of secure materials** or **on-site activity** that cannot be handled remotely or at an alternative worksite, such as face-to-face personal contact in some medical, counseling, or similar services; hands-on contact with machinery, equipment, vehicles, etc.; or other physical presence/site dependent activity, such as forest ranger or guard duty tasks; and
- Employees whose last performance rating of record (or its equivalent) is below *fully successful* (or the agency's equivalent) or whose conduct has resulted in disciplinary action within the last year. (NOTE: Agencies may require a rating of record higher than *fully successful* for eligibility, but must still report as eligible all employees rated *fully successful* or higher.)

### Understand and Assess the Needs of the Workgroup

Telework is often implemented piecemeal, rather than strategically, as individuals request arrangements. This reactive approach carries the risk of raising fairness issues, with decisions about telework arrangements being made on a first-come, first-served basis. Telework should be implemented strategically, taking into account the needs and work of the group, rather than granting or denying telework requests one by one. Employees should participate in the process and may be asked to help formulate possible solutions to issues that may arise.

## Create Signed Agreements

The teleworker and his or her manager should enter into a written agreement for every type of telework, whether the employee teleworks regularly or not. The parameters of this agreement are most often laid out by the agency policy and/or collective bargaining agreement, but should include certain key elements (see **How To Be an Effective Teleworker**). Most importantly, the agreement should be signed and dated by the manager. Managers should keep copies of all telework agreements on file.

Telework agreements are living documents and should be revisited by the manager and teleworker and re-signed regularly, preferably at least once a year. At a minimum, new telework agreements should be executed when a new employee/manager relationship is established.

OPM strongly recommends any individuals asked to telework in the case of a Continuity of Operations (COOP) event or a pandemic health crisis have a telework agreement in place that provides for such an occurrence. Such individuals also should practice teleworking on a regular basis as much as possible.

## Base Denials on Business Reasons

Telework requests may be denied and telework agreements may be terminated. Telework is not an employee right, even if the employee is considered “eligible” by OPM standards and/or the individual agency standards.

Denial and termination decisions must be based on business needs or performance, not personal reasons. For example, a manager may deny a telework agreement if, due to staffing issues, an employee who otherwise has portable duties must provide on-site office coverage. In this case, and whenever applicable, the denial or termination should include information about when the employee might reapply, and also if applicable, what actions the employee should take to improve his or her chance of approval. Denials should be provided in a timely manner. Managers should also review the agency’s negotiated agreement(s) and telework policy to ensure they meet any applicable requirements.

Managers should provide affected employees (and keep copies of) signed written denials or terminations of telework agreements. These should include information about why the arrangement was denied or terminated. OPM tracks the numbers of agreements denied and/or terminated, as well as the reasons for such an action; therefore, copies should be given to the agency telework coordinator as well.

Bargaining unit employees may file a grievance about the denial or cancellation of a telework agreement through the negotiated grievance procedure.

## Use Good Performance Management Practices

Managers often ask, “How do I know what my employees are doing when I can’t see them?” Performance standards for off-site employees are the same as performance standards for on-site employees. Management expectations of a teleworker’s performance should be clearly addressed in the telework agreement. As with on-site employees, teleworkers must, and can, be held accountable for the results they produce. Good performance management techniques practiced by a manager will mean a smooth, easy transition to a telework environment. Resources for performance management are available from OPM at [www.opm.gov/perform](http://www.opm.gov/perform).

## Communicate Expectations

The telework agreement (see **How To Be an Effective Teleworker** for key elements) provides a framework for the discussion that needs to take place between the manager and the employee about expectations. For both routine and emergency telework, this discussion is important to ensure the manager and the employee understand each other's expectations around basic issues such as the following:

- How will the manager know the employee is present? (Signing in, signing off procedures may be needed.)
- How will the manager know the work is being accomplished?
- What technologies will be used to maintain contact?
- What equipment is the agency providing? What equipment is the teleworker providing?
- Who provides technical assistance in the event of equipment disruption?
- What will the weekly/monthly telework schedule be? How will the manager and co-workers be kept updated about the schedule? Do changes need to be pre-approved?
- What will the daily telework schedule be? Will the hours be the same as in the main office, or will they be different?
- What are the physical attributes of the telework office, and do they conform to basic safety standards? (Use a safety checklist.)
- What are the expectations for availability (phone, e-mail, etc.)?
- What is the expectation regarding the amount of notice (if any) given for reporting to the official worksite, and how will such notice be provided?
- How is a telework agreement terminated by management or an employee?

## Facilitate Communication With All Members of the Workgroup

Teleworking and non-teleworking employees must understand expectations regarding telework arrangements, including coverage, communication, and responsibilities. Although individual teleworkers must take responsibility for their own availability and information sharing, managers should ensure methods are in place to maintain open communication across the members of a workgroup.

## Remain Equitable in Assigning Work and Rewarding Performance

Managers should avoid distributing work based on "availability" as measured by physical presence, and avoid the pitfall of assuming someone who is present and looks busy is actually accomplishing more work than someone who is not on-site. Good performance management practices are essential for telework to work effectively and equitably.

## Make Good Decisions About Equipment

In Federal Management Regulation (FMR) Bulletin 2006-B3, Guidelines for Alternative Workplace Arrangements (a link is available at [www.telework.gov](http://www.telework.gov) ), GSA provides guidelines for the equipment and support an agency may provide teleworkers. Generally, decisions are made by the agency or by individual managers regarding the ways in which teleworkers should be equipped. Managers should familiarize themselves with these guidelines and also with their agency's policy on equipment. Within those constraints, the challenge for managers is finding the right balance of budget, security, and effectiveness. Factors to consider include technology needs based on the work of the employee, agency security requirements, and budget constraints.

## **Practice, Practice, Practice**

The success of an organization's telework program depends on regular, routine use. Experience is the only way to enable managers, employees, IT support, and other stakeholders to work through any technology, equipment, communications, workflow, and associated issues that may inhibit the transparency of remote work. Individuals expected to telework in an emergency situation should, with some frequency, telework under non-emergency circumstances as well.

## **The Bottom Line**

### **Managers MUST—**

- Implement routine telework in their organization to the fullest extent possible
- Treat employees equitably and fairly in implementing telework in their organization
- Identify eligible and ineligible employees using established agency criteria
- Include telework in COOP and other emergency response planning

### **Managers MAY NOT—**

- Under normal circumstances, require that an employee work from home
- Terminate a telework agreement for reasons other than business or performance reasons

### **Managers MAY—**

- Require an employee to work at an alternative worksite (e.g., a telework center) within the employee's commuting area
- Terminate a telework agreement for business reasons, e.g., an employee's poor performance or a change in the nature of the work

## **Sustaining a Successful Telework Arrangement – An Employee's Perspective**

### **What's in it for me?**

#### **Work/life Balance**

Telework gives employees more flexibility in meeting personal and professional responsibilities.

#### **Stress Reduction**

Telework can help make life less stressful overall by reducing commuting time and adding to discretionary time, thus reducing commuting stress.

#### **Freedom From Office Distractions**

Offices can be busy places, especially in environments where employees work in cubicles. Distractions are plentiful. Many employees find they are able to focus and be more productive when they telework.

## Engagement

When employees feel they have greater control over their work, they tend to feel more committed to their organizations.

## The Basics

### Know Your Telework Coordinator

All agencies must designate a telework coordinator who acts as the key contact for policy and program questions. Employees should maintain contact with their telework coordinator for support and assistance as well as to ensure they follow the agency's policy and procedures.

### Know Your Agency's Policy and Procedures

As required by Public Law 106-346, § 359, all agencies must have a telework policy. Employees should familiarize themselves with this policy to ensure they are in compliance with its requirements. Most agency policies will include procedures to be followed for establishing telework arrangements, obtaining equipment, etc.

In addition, employees need to work with their managers and information technology (IT) support to ensure their equipment choices and telework agreements comply with their agency's policy on information systems and technology security (see **Security**). This includes the protection of sensitive files and documents needed for work.

### Participate in Training

OPM offers online teleworker training, which can be accessed via the joint OPM/GSA Website at [http://telework.gov/tools\\_and\\_resources/training/index.aspx](http://telework.gov/tools_and_resources/training/index.aspx). In addition, many agencies offer various types of training. Some training may be required for participation in a telework program.

Information technology security training, administered at the agency level, is mandatory (see **Security**). Teleworkers must complete this training and understand their responsibilities in safeguarding work-related information.

## How To Be an Effective Teleworker

### Conduct an Honest Self-Assessment

A successful telework arrangement starts with a good self-assessment. Employees should consider the following factors in making an honest determination about their telework capabilities:

- Sufficient portable work for the amount of telework being proposed
- Ability to work independently, without close supervision
- Comfort with the technologies, if any, needed to telework
- Good communication with manager, co-workers, and customers that will enable a relatively seamless transition from on-site to off-site
- Telework office space conducive to getting the work done
- Dependent care (i.e., child care, elder care, or care of any other dependent adults) arrangements in place

- Ability to be flexible about the telework arrangement to respond to the needs of the manager, the workgroup, and the workload

### Create a Good Telework Agreement

A successful telework arrangement also requires a strong foundation. No matter how frequently or infrequently an employee intends to telework, a written agreement should be executed between the employee and manager. Elements of this agreement should include the following:

- Location of the telework office (e.g., home, telework center, other)
- Equipment inventory – what the employee is supplying, what the agency is providing, and if applicable, what the telework center is providing
- In general, the job tasks to be performed while teleworking
- Telework schedule
- Telework contact information (e.g., the phone number to use on the telework day)
- Safety checklist – certifying the home office meets certain standards (see **Safety**)
- Expectations for emergency telework (specify whether the employee is expected to telework in the case of a COOP event, pandemic health crisis, shutdown of agency operations, etc.)

Telework agreements need to be updated as circumstances change (e.g., if the telework schedule changes). The manager and teleworker should work together to evaluate the arrangement periodically, make changes in the agreement as necessary, and re-sign the document. In the first year this may happen within a few months; thereafter, perhaps annually.

### Safeguard Information and Data

Employees must take responsibility for the security of the data and other information they handle while teleworking, as described in **Security**. Employees should—

- Be familiar with, understand, and comply with their agency's information security policies;
- Participate in agency information security training; and
- Maintain security of any relevant materials, including files, correspondence, and equipment, in addition to following security protocols for remote connectivity. Depending on the sensitivity of the information being handled, the home office may need to include security measures such as locked file cabinets, similar to what may be used in the worksite

### Plan the Work

Employees who telework should assess the portability of their work and the level of technology available at the remote site as they prepare to telework. Employees will need to plan their telework days to be as productive as possible by considering the following questions:

- What files or other documents will I need to take with me when I leave my regular workplace the day before teleworking?
- What equipment will I need to take?
- Who needs to be notified that I will be teleworking?
- What other steps should I take before I leave my office? (e.g., forwarding the phone)
- In the case of emergency telework, what should I have available at all times at my home office or, if applicable, a telework center, to enable me to be functional without coming on-site to retrieve materials?

## Manage Expectations and Communication

Managers are ultimately responsible for the effective functioning of the workgroup. Nevertheless, teleworkers should help manage the group's expectations and their own communication in order to avoid any negative impact from their arrangement. Issues that should be addressed include the following:

- Backup: Even with very portable work there are inevitably instances where physical presence is required and a co-worker may need to step in. Co-worker backup should be planned, it should not be onerous, and it should be reciprocal. Cross-training of staff has broad organizational benefits and should be a management priority.
- On-the-spot assistance: Teleworkers may occasionally need someone who is physically in the main office to assist them (e.g., to fax a document or look up information). Again, these arrangements should not be unduly burdensome; a "buddy system" between teleworkers may be the least disruptive solution.
- Communication with manager: The manager must be kept apprised of the teleworker's schedule, how to make contact with the teleworker, and the status of all pending work.
- Communication with co-workers: Co-workers must be informed about the appropriate handling of telephone calls or other communications that are the teleworker's responsibility.

## The Bottom Line

### Teleworkers MUST—

- Comply with the security and telework policies of their agency
- Take responsibility for ensuring the success of their arrangement
- Notify the manager of any changes in their situation that may affect the arrangement

### Teleworkers MAY NOT—

- Assume a telework arrangement is permanent
- Use telework as a substitute for child or other dependent care

### Teleworkers MAY—

- Use appropriate grievance procedures if they believe their telework request or agreement was wrongfully denied or terminated. Telework requests or agreements may be denied or terminated only for business reasons, and managers must provide written justification to the affected employee.

## Safety

Teleworkers must address issues of their own personal safety to be effective while teleworking from a home office. This is not an issue in telework centers, where appropriate workstations are provided.

Government employees causing or suffering work-related injuries and/or damages at the alternative worksite (home, telework center, or other location) are covered by the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, or the Federal Employees' Compensation Act (workers' compensation), as appropriate.

## **Manager Safety Responsibilities**

- Review safety checklist with teleworker.
- Depending on agency policy, managers may have the authority to visit home offices, with advance notice to the teleworker.

## **Teleworker Safety Responsibilities (for home-based telework)**

- Provide appropriate telework space, with ergonomically correct chair, desk, and computer equipment.
- Complete safety checklist certifying the space is free from hazards. This checklist is not legally binding, but details management expectations and, if signed, assumes compliance.
- Immediately report any work-related accident occurring at the telework site and provide the supervisor with all medical documentation related to the accident. It may be necessary for an agency representative to access the home office to investigate the report.

## **Security**

(Note: This guidance is subject to change to incorporate pertinent information from the June 23, 2006, Office of Management and Budget (OMB) memo, "Protection of Sensitive Agency Information" <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-16.pdf>.)

Federal employees and their managers are responsible for the security of Federal Government property and information, regardless of their work location. Agency security policies do not change and should be enforced at the same rigorous level when employees telework as when they are in the office.

The Federal Information Security Management Act of 2002 (FISMA) defines information security as protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

- (A) integrity, which means guarding against improper information modification or destruction and includes ensuring information nonrepudiation and authenticity;
- (B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and
- (C) availability, which means ensuring timely and reliable access to and use of information.

As in the main office, security measures should cover not only information systems and technology, but all aspects of the information systems used by the employee, including paper files, other media, storage devices, and telecommunications equipment (e.g., laptops, PDAs, and cell phones). Employees who telework from home need to keep Government property and information safe, secure, and separated from their personal property and information.

Agencies managing or operating records systems are required by the Privacy Act of 1974 and other relevant laws and regulations to issue rules for maintaining the security of information contained in those records, whether the information is maintained in electronic or paper form. Managers and employees must follow these rules whenever they are accessing this information,

whether they are working from home, at another remote location, or at their regular duty station. For example, OPM regulates access and use of Government personnel records as follows:

Section 293.106(a) of title 5, Code of Federal Regulations, mandates that “[a]ll persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access.”

Under 5 CFR 293.108, “Office and agency employees whose official duties involve personnel records shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 U.S.C. 552).” Also, “[a]ny Office or agency employee who makes a disclosure of personnel records knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to disciplinary action and may also be subject to criminal penalties where the records are subject to the Privacy Act (5 U.S.C. 552a).”

Each Executive agency must develop a Federal information systems security awareness and training plan and provide role-specific security training to employees as required by 5 CFR 930.301. The regulations advise agencies to follow the guidance published by the National Institute of Standards and Technology (NIST).

NIST publications include Special Publication 800-50, “Building an Information Technology Security Awareness and Training Program,” which provides a blueprint for developing agency-specific security awareness and training materials. NIST advises agencies that users of information systems must—

- Understand and comply with agency security policies and procedures;
- Be appropriately trained in the rules of behavior for the systems and applications to which they have access;
- Work with management to meet training needs;
- Keep software/applications updated with security patches; and
- Be aware of actions they can take to better protect their agency’s information. These actions include, but are not limited to, proper password usage, data backup, proper antivirus protection, reporting any suspected incidents or violations of security policy, and following rules established to avoid social engineering attacks and rules to deter the spread of spam or viruses and worms.

Special Publication 800-50 recommends addressing these topics in agency security awareness campaigns. Other topics may include accessing unknown email and attachments, dealing with spam, protecting against “shoulder surfing (i.e., someone reading a document or a computer screen from behind the user),” physical protection of data (e.g., from water, fire, dust or dirt, physical access), inventory and property transfer, personal use of systems at work and home, use of encryption, transmission of sensitive/confidential information, laptop security, and personally-owned systems and software.

In Special Publication 800-46, “Security for Telecommuting and Broadband Communications,” NIST helps Federal agencies address security issues by providing recommendations on

securing a variety of applications, protocols, and networking architectures to be used by teleworkers. NIST recommendations encompass the following five security principles:

- All home networks connected to the Internet via a broadband connection should have some firewall device installed.
- Web browsers should be configured to limit vulnerability to intrusion.
- Operating system configuration options should be selected to increase security.
- Selection of wireless and other home networking technologies should be in accordance with security goals.
- Federal agencies should provide teleworking users with guidance on selecting appropriate technologies, software, and tools consistent with the agency network and with agency security policies.

Complete texts of these and other NIST publications are available at  
<http://csrc.nist.gov/publications/nistpubs/>.

## **Manager Security Responsibilities**

- Thoroughly review all telework agreements to ensure they are in compliance with agency information security policies.
- Ensure employees receive agency information systems security training.
- Work with employees to ensure they fully understand and have the technical expertise to comply with agency requirements.
- Invest in technology and equipment that can support success.
- Work with employees to develop secure systems for potentially sensitive documents and other materials.
- Track removal and return of potentially sensitive materials, such as personnel records.
- Enforce personal privacy requirements for records.

## **Teleworker Security Responsibilities**

- Participate in agency information systems security training.
- Achieve sufficient technical proficiency to implement the required measures.
- Provide a high level of security to any personal or private information accessed at the telework site or transported between locations.
- Remain sensitive to individual rights to personal privacy.
- Comply with agency policies and with any additional requirements spelled out in the telework agreement.

## **Emergency Response Telework: Continuity of Operations (COOP)**

Telework should be part of all agency emergency planning. Management must be committed to implementing remote work arrangements as broadly as possible to take full advantage of the potential of telework for this purpose and ensure that—

- Equipment, technology, and technical support have been tested
- Employees are comfortable with technology and communications methods
- Managers are comfortable managing a distributed workgroup

In addition, agencies and management should consider investing in and using—

- Teleconferencing, videoconferencing, and other technologies that enable multi-channel communication
- Paperless systems

## **Continuity of Operations (COOP)**

The Federal Emergency Management Agency's Federal Continuity Directive (FDC) 1 defines COOP planning as “an effort within individual agencies to ensure they can continue to perform their Mission Essential Functions (MEFs) and Primary Mission Essential Functions (PMEFs) during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.

Telework can play a vital role in helping agencies preserve their essential functionality in this environment.

### **Manager COOP Responsibilities**

- Understand the agency COOP plan and management roles in executing the plan.
- Notify employees designated as essential personnel for COOP.
- Communicate expectations both to COOP and non-COOP employees regarding what steps they need to take in case of an emergency.
- Establish communication processes to notify COOP and non-COOP employees of COOP status in the event of an emergency.
- Integrate COOP expectations into telework agreements as appropriate.
- Allow essential personnel who might telework in case of an emergency to telework regularly to ensure functionality.

### **Teleworker COOP Responsibilities**

- Maintain a current telework agreement detailing any COOP responsibilities, as appropriate.
- Practice telework regularly to ensure effectiveness.
- Be familiar with agency and workgroup COOP plans and individual expectations during COOP events.

## **Pandemic**

The National Strategy for Pandemic Influenza Implementation Plan references the benefits of using telework to slow the spread of disease by keeping face-to-face contact to a minimum (often referred to as “social distancing”) while maintaining operations as close to normal as possible. Telework can also help agencies retain functionality as infrastructure issues and other challenges make the main worksite difficult to access.

The key to successful use of telework in the event of a pandemic health crisis is an effective routine telework program. As many employees as possible should have telework capability (i.e., current telework arrangements, connectivity, and equipment commensurate with their work needs and frequent enough opportunities to telework to ensure all systems have been tested and are known to be functional). This may entail creative thinking beyond current implementation of telework, drawing in employees who otherwise might not engage in remote access and ensuring their effectiveness as a distributed workforce.

**Manager Pandemic Responsibilities**

- Implement telework to the greatest extent possible in the workgroup so systems are in place to support successful remote work in an emergency.
- Communicate expectations to all employees regarding their roles and responsibilities in relation to remote work in the event of a pandemic health crisis.
- Establish communication processes to notify employees of activation of this plan.
- Integrate pandemic health crisis response expectations into telework agreements.
- With the employee, assess requirements for working at home (supplies and equipment needed for an extended telework period).
- Determine how all employees who may telework will communicate with one another and with management to accomplish work.
- Identify how time and attendance will be maintained.

**Teleworker Pandemic Responsibilities**

- Maintain current telework agreement specifying pandemic health crisis telework responsibilities, as appropriate.
- Perform all duties assigned by management, even if they are outside usual or customary duties.
- Practice telework regularly to ensure effectiveness.
- Be familiar with agency and workgroup pandemic health crisis plans and individual expectations for telework during a pandemic health crisis.

## References

Federal Employee's Emergency Guide  
Office of Personnel Management  
<http://www.opm.gov/emergency/PDF/EmployeesGuide.pdf>

Federal Information Security Management Act (FISMA)  
<http://csrc.nist.gov/groups/SMA/fisma/index.html>

Federal Management Regulation (FMR) Bulletin 2006-B3  
Guidelines for Alternative Workplace Arrangements  
[Link to FMR Bulletin No. 2006-B3](#)

Federal Manager's/Decision Maker's Emergency Guide  
Office of Personnel Management  
<http://www.opm.gov/emergency/PDF/ManagersGuide.pdf>

Federal Continuity Directive (FDC) 1  
<http://www.fema.gov/pdf/about/offices/fcd1.pdf>

GAO-03-679, July 2003  
Report to the Chairman, Committee on Government Reform, House of Representatives  
Human Capital: *Further Guidance, Assistance, and Coordination Can Improve Federal Telework Efforts*  
<http://www.gao.gov/new.items/d03679.pdf>

GAO-06-713, May 2006  
Report to the Chairman, Committee on Government Reform, House of Representatives  
Continuity of Operations: *Selected Agencies Could Improve Planning for Use of Alternate Facilities and Telework during Disruptions*  
<http://www.gao.gov/new.items/d06713.pdf>

National Strategy for Pandemic Influenza Implementation Plan  
<http://www.whitehouse.gov/homeland/pandemic-influenza.html>

NIST Special Publication 800-46 Revision 1  
Guide to Enterprise Telework and Remote Access Security  
<http://csrc.nist.gov/publications/nistpubs/800-46-rev1/sp800-46r1.pdf>

From: **Meindl, Max** <max.meindl@fema.dhs.gov>  
To: **femamax@gmail.com** <femamax@gmail.com>  
Subject: FW:  
Date: 08.06.2020 19:05:50 (+02:00)  
Attachments: 2302. Prohibited personnel practices.eml (19 pages), PART 752-ADVERSE ACTIONS.eml (10 pages), statute.eml (7 pages), RE FMLA Recertification - M. Meindl.eml (4 pages)

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**From:** Meindl, Max  
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**To:** femamax@gmail.com  
**Subject:**

From: **femamax@gmail.com** <femamax@gmail.com>  
To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
Subject: 2302. Prohibited personnel practices  
Date: 23.12.2019 02:04:31 (+01:00)  
Attachments: 2302. Prohibited personnel practices.pdf (11 pages), CHAPTER 75-ADVERSE ACTIONS.pdf (7 pages)

Secretary be used in determining who is an air traffic controller.

1980—Pub. L. 96-347 substituted “controller; Secretary” for “controller” in section catchline, and in text included employees of the Department of Defense within the meaning of air traffic controller or controller and defined “Secretary” to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96-347 provided that: “This Act [amending this section and sections 3307, 3381 to 3385, and 8335 of this title and enacting provisions set out as a note under section 8335 of this title] shall take effect on the later of—

“(1) October 1, 1980, or

“(2) the ninetieth day after the date of the enactment of this Act [Sept. 12, 1980].”

#### EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see, section 10 of Pub. L. 92-297, set out as a note under section 3381 of this title.

### CHAPTER 23—MERIT SYSTEM PRINCIPLES

#### Sec.

- |       |  |
|-------|--|
| 2301. | Merit system principles.   |
| 2302. | Prohibited personnel practices.  |
| 2303. | Prohibited personnel practices in the Federal Bureau of Investigation. |
| 2304. | Responsibility of the Government Accountability Office.                |
| 2305. | Coordination with certain other provisions of law.                     |

#### AMENDMENTS

2004—Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, substituted “Government Accountability Office” for “General Accounting Office” in item 2304.

#### § 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency; and
- (2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employ-

ers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1113; amended Pub. L. 101-474, §5(c), Oct. 30, 1990, 104 Stat. 1099.)

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-474 redesignated par. (3) as (2) and struck out former par. (2) which provided that this section is applicable to Administrative Office of United States Courts.

#### EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

**NOTIFICATION AND FEDERAL EMPLOYEE  
ANTIDISCRIMINATION AND RETALIATION**

Pub. L. 107-174, May 15, 2002, 116 Stat. 566, as amended by Pub. L. 109-435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242, provided that:

**“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

“(a) **SHORT TITLE.**—This Act may be cited as the ‘Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002’.

“(b) **TABLE OF CONTENTS.**—[Omitted.]

**“TITLE I—GENERAL PROVISIONS**

**“SEC. 101. FINDINGS.**

“Congress finds that—

“(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

“(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

“(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist \$600,000;

“(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

“(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

“(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

“(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

“(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

**“SEC. 102. SENSE OF CONGRESS.**

“It is the sense of Congress that—

“(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

“(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

“(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

“(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—

“(i) the employment of other employees; or

“(ii) the benefits to which those employees are entitled through statute or contract; and

“(B) this Act is not intended to authorize those actions;

“(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions

against managers or by violating the procedural rights of managers who have been accused of discrimination; and

“(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

“(C) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

“(D) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

“(i) reductions in force;

“(ii) furloughs;

“(iii) other reductions in compensation or benefits fits for the workforce of the agency; or

“(iv) an adverse effect on the mission of the agency.

**“SEC. 103. DEFINITIONS.**

“For purposes of this Act—

“(1) the term ‘applicant for Federal employment’ means an individual applying for employment in or under a Federal agency;

“(2) the term ‘basis of alleged discrimination’ shall have the meaning given such term under section 303;

“(3) the term ‘Federal agency’ means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Regulatory Commission;

“(4) the term ‘Federal employee’ means an individual employed in or under a Federal agency;

“(5) the term ‘former Federal employee’ means an individual formerly employed in or under a Federal agency; and

“(6) the term ‘issue of alleged discrimination’ shall have the meaning given such term under section 303.

**“SEC. 104. EFFECTIVE DATE.**

“This Act and the amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning more than 180 days after the date of the enactment of this Act [May 15, 2002].

**“TITLE II—FEDERAL EMPLOYEE  
DISCRIMINATION AND RETALIATION**

**“SEC. 201. REIMBURSEMENT REQUIREMENT.**

“(a) **APPLICABILITY.**—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—

“(1) any provision of law cited in subsection (c); or

“(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

“(b) **REQUIREMENT.**—An amount equal to the amount of each payment described in subsection (a) shall be reimbursed to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, or such fund, or of such account available for the enforcement of any Federal law) available for operating expenses of the Federal agency to which the discriminatory conduct involved is attributable as determined under section 204.

“(c) **SCOPE.**—The provisions of law cited in this subsection are the following:

“(1) Section 2302(b) of title 5, United States Code, as applied to discriminatory conduct described in paragraphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.

“(2) The provisions of law specified in section 2302(d) of title 5, United States Code.

**“SEC. 202. NOTIFICATION REQUIREMENT.**

“(a) IN GENERAL.—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—

“(1) in accordance with otherwise applicable provisions of law; or

“(2) if, or to the extent that, no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

“(b) POSTING ON THE INTERNET.—Any written notification under this section shall include, but not be limited to, the posting of the information required under paragraph (1) or (2) (as applicable) of subsection (a) on the Internet site of the Federal agency involved.

“(c) EMPLOYEE TRAINING.—Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

**“SEC. 203. REPORTING REQUIREMENT.**

“(a) ANNUAL REPORT.—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year—

“(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;

“(2) the status or disposition of cases described in paragraph (1);

“(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any;

“(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);

“(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));

“(6) a detailed description of—

“(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

“(i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or

“(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and

“(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

“(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

“(A) an examination of trends;

“(B) causal analysis;

“(C) practical knowledge gained through experience; and

“(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

“(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

“(b) FIRST REPORT.—The 1st report submitted under subsection (a) shall include for each item under subsection (a) data for each of the 5 immediately preceding fiscal years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).

**“SEC. 204. RULES AND GUIDELINES.**

“(a) ISSUANCE OF RULES AND GUIDELINES.—The President (or the designee of the President) shall issue—

“(1) rules to carry out this title;

“(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

“(3) based on the results of such study, advisory guidelines incorporating best practices that Federal agencies may follow to take such actions against such employees.

“(b) AGENCY NOTIFICATION REGARDING IMPLEMENTATION OF GUIDELINES.—Not later than 30 days after the issuance of guidelines under subsection (a), each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a written statement specifying in detail—

“(1) whether such agency has adopted and will fully follow such guidelines;

“(2) if such agency has not adopted such guidelines; the reasons for the failure to adopt such guidelines; and

“(3) if such agency will not fully follow such guidelines, the reasons for the decision not to fully follow such guidelines and an explanation of the extent to which such agency will not follow such guidelines.

**“SEC. 205. CLARIFICATION OF REMEDIES.**

“Consistent with Federal law, nothing in this title shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States.

**“SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE [now GOVERNMENT ACCOUNTABILITY OFFICE] ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.**

“(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—

“(1) STUDY.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

“(B) CONTENTS.—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

“(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

“(ii) affect the workload of the Commission;

“(iii) affect established alternative dispute resolution procedures in such agencies; and

“(iv) affect any other matters determined by the General Accounting Office [now Government Accountability Office] to be appropriate for consideration.

“(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

“(b) STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.—

“(1) STUDY.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a)(1) and (2).

“(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

“(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct—

“(A) a study on the effects of section 201 on the operations of Federal agencies; and

“(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) [now 41 U.S.C. 7108] on the operations of Federal agencies.

“(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

“(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

“(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

“(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

“(i) the operations of Federal agencies;

“(ii) funds appropriated on an annual basis;

“(iii) employee relations and other human capital matters;

“(iv) settlements; and

“(v) any other matter determined by the General Accounting Office [now Government Accountability Office] to be appropriate for consideration.

“(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, and the Attorney General.

“(d) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

“(A) this Act; and

“(B) the Contracts Dispute [Contract Disputes] Act of 1978 (41 U.S.C. 601 note [see 41 U.S.C. 7101 et seq.]; Public Law 95–563).

“(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, and the Attorney General.

“TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

“SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

“(a) IN GENERAL.—Each Federal agency shall post on its public Web site, in the time, form, and manner prescribed under section 303 (in conformance with the requirements of this section), summary statistical data relating to equal employment opportunity complaints filed with such agency by employees or former employees of, or applicants for employment with, such agency.

“(b) CONTENT REQUIREMENTS.—The data posted by a Federal agency under this section shall include, for the then current fiscal year, the following:

“(1) The number of complaints filed with such agency in such fiscal year.

“(2) The number of individuals filing those complaints (including as the agent of a class).

“(3) The number of individuals who filed 2 or more of those complaints.

“(4) The number of complaints (described in paragraph (1)) in which each of the various bases of alleged discrimination is alleged.

“(5) The number of complaints (described in paragraph (1)) in which each of the various issues of alleged discrimination is alleged.

“(6) The average length of time, for each step of the process, it is taking such agency to process complaints (taking into account all complaints pending for any length of time in such fiscal year, whether first filed in such fiscal year or earlier). Average times under this paragraph shall be posted—

“(A) for all such complaints,

“(B) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested, and

“(C) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested.

“(7) The total number of final agency actions rendered in such fiscal year involving a finding of discrimination and, of that number—

“(A) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

“(B) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

“(8) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

“(A) the number and percentage involving a finding of discrimination based on each of the respective bases of alleged discrimination, and

“(B) of the number specified under subparagraph (A) for each of the respective bases of alleged discrimination—

“(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

“(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

“(9) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

“(A) the number and percentage involving a finding of discrimination in connection with each of the respective issues of alleged discrimination, and

“(B) of the number specified under subparagraph (A) for each of the respective issues of alleged discrimination—

“(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

“(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

“(10)(A) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the number that were first filed before the start of the then current fiscal year.

“(B) With respect to those pending complaints that were first filed before the start of the then current fiscal year—

“(i) the number of individuals who filed those complaints, and

“(ii) the number of those complaints which are at the various steps of the complaint process.

“(C) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the total number of complaints with respect to which the agency violated the requirements of section 1614.106(e)(2) of title 29 of the Code of Federal Regulations (as in effect on July 1, 2000, and amended from time to time) by failing to conduct within 180 days of the filing of such complaints an impartial and appropriate investigation of such complaints.

“(c) TIMING AND OTHER REQUIREMENTS.—

“(1) CURRENT YEAR DATA.—Data posted under this section for the then current fiscal year shall include both—

“(A) interim year-to-date data, updated quarterly, and

“(B) final year-end data.

“(2) DATA FOR PRIOR YEARS.—The data posted by a Federal agency under this section for a fiscal year (both interim and final) shall include, for each item under subsection (b), such agency's corresponding year-end data for each of the 5 immediately preceding fiscal years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

#### “SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

“(a) IN GENERAL.—The Equal Employment Opportunity Commission shall post on its public Web site, in the time, form, and manner prescribed under section 303 for purposes of this section, summary statistical data relating to—

“(1) hearings requested before an administrative judge of the Commission on complaints described in section 301, and

“(2) appeals filed with the Commission from final agency actions on complaints described in section 301.

“(b) SPECIFIC REQUIREMENTS.—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (10) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

“(c) COORDINATION.—The data required under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

#### “SEC. 303. RULES.

“The Equal Employment Opportunity Commission shall issue any rules necessary to carry out this title.”

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

[For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.]

[Memorandum of President of the United States, July 8, 2003, 68 F.R. 45155, delegated to Director of Office of Personnel Management authority of President under section 204(a) of Public Law 107-174, set out above.]

#### § 2302. Prohibited personnel practices

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

(2) For the purpose of this section—

(A) “personnel action” means—

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination; and

(xi) any other significant change in duties, responsibilities, or working conditions;

with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) “covered position” means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and

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

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

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the Government Accountability Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person’s right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

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

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

(D) for<sup>1</sup> refusing to obey an order that would require the individual to violate a law;

<sup>1</sup> So in original. The word “for” probably should not appear.

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

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

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

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

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

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)(1) For the purpose of this section, the term “veterans' preference requirement” means any of the following provisions of law:

(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

(B) Sections 943(c)(2) and 1784(c) of title 10.

(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

(D) Section 301(c) of the Foreign Service Act of 1980.

(E) Sections 106(f),<sup>2</sup> 7281(e), and 7802(5)<sup>2</sup> of title 38.

(F) Section 1005(a) of title 39.

(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

(Added Pub. L. 95–454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1114; amended Pub. L. 101–12, §4, Apr. 10, 1989, 103 Stat. 32; Pub. L. 101–474, §5(d), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 102–378, §2(5), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 103–94, §8(c), Oct. 6, 1993, 107 Stat. 1007; Pub. L. 103–359, title V, §501(c), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 103–424, §5, Oct. 29, 1994, 108 Stat. 4363; Pub. L. 104–197, title III, §315(b)(2), Sept. 16, 1996, 110 Stat. 2416, Pub. L. 104–201, div. A, title XI, §1122(a)(1), title XVI, §1615(b), Sept. 23, 1996, 110 Stat. 2687, 2741; Pub. L. 105–339, §6(a), (b), (c)(2), Oct. 31, 1998, 112 Stat. 3187, 3188; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

#### REFERENCES IN TEXT

Section 1308(b) of the Alaska National Interest Lands Conservation Act, referred to in subsec. (e)(1)(C), is classified to section 3198(b) of Title 16, Conservation.

Section 301(c) of the Foreign Service Act of 1980, referred to in subsec. (e)(1)(D), is classified to section 3941(c) of Title 22, Foreign Relations and Intercourse.

Section 106(f) of title 38, referred to in subsec. (e)(1)(E), was enacted subsequent to the enactment of subsec. (e) of this section.

Section 7802(5) of title 38, referred to in subsec. (e)(1)(E), was redesignated section 7802(e) of title 38 by Pub. L. 108–170, title III, §304(b)(3), Dec. 6, 2003, 117 Stat. 2059.

#### AMENDMENTS

2008—Subsec. (a)(2)(C)(ii). Pub. L. 110–417 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2004—Subsec. (a)(2)(C)(iii). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

<sup>2</sup> See References in Text note below.

1998—Subsec. (a)(1). Pub. L. 105-339, § 6(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘For purposes of this title, ‘prohibited personnel practice’ means the following:

“(A) Any action described in subsection (b) of this section.

“(B) Any action or failure to act that is designated as a prohibited personnel action under section 1599c(a) of title 10.”

Subsec. (b)(10) to (12). Pub. L. 105-339, § 6(a), struck out “or” at end of par. (10), added par. (11), and redesignated former par. (11) as (12).

Subsec. (e). Pub. L. 105-339, § 6(b), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104-201, § 1615(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘For the purpose of this title, ‘prohibited personnel practice’ means any action described in subsection (b) of this section.’’

Subsec. (a)(2)(C)(ii). Pub. L. 104-201, § 1122(a)(1), substituted ‘‘National Imagery and Mapping Agency’’ for ‘‘Central Imagery Office’’.

Subsec. (b)(2). Pub. L. 104-197 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(3);’’.

1994—Subsec. (a)(2)(A). Pub. L. 103-424, § 5(a)(3), in concluding provisions, inserted before semicolon “, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31’’.

Subsec. (a)(2)(A)(x), (xi). Pub. L. 103-424, § 5(a)(1), (2), added cl. (x) and (xi) and struck out former cl. (x) which read as follows: ‘‘any other significant change in duties or responsibilities which is inconsistent with the employee’s salary or grade level;’’.

Subsec. (a)(2)(B). Pub. L. 103-424, § 5(b), amended subparagraph. (B) generally. Prior to amendment, subparagraph. (B) read as follows: ‘‘‘covered position’ means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

“(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

“(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.”

Subsec. (a)(2)(C)(i). Pub. L. 103-424, § 5(c), inserted before semicolon “, except in the case of an alleged prohibited personnel practice described under subsection (b)(8)”.

Subsec. (a)(2)(C)(ii). Pub. L. 103-359 inserted ‘‘the Central Imagery Office,’’ after ‘‘Defense Intelligence Agency,’’.

Subsec. (c). Pub. L. 103-424, § 5(d), inserted before period at end of first sentence “, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title’’.

1993—Subsec. (b)(2). Pub. L. 103-94 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

“(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

“(B) an evaluation of the character, loyalty, or suitability of such individual;’’.

1992—Subsec. (b)(8)(B). Pub. L. 102-378 substituted ‘‘Special Counsel’’ for ‘‘Special Counsel of the Merit Systems Protection Board’’.

1990—Subsec. (a)(2)(C). Pub. L. 101-474 struck out ‘‘, the Administrative Office of the United States Courts,’’ after ‘‘means an Executive agency’’.

1989—Subsec. (b)(8). Pub. L. 101-12, § 4(a), in introductory provision inserted ‘‘, or threaten to take or fail to take,’’ after ‘‘fail to’’ and substituted ‘‘because of’’ for ‘‘as a reprisal for’’, in subparagraph. (A) substituted ‘‘any disclosure’’ for ‘‘a disclosure’’, in subparagraph. (A)(ii) inserted ‘‘gross’’ before ‘‘mismanagement’’, in subparagraph. (B) substituted ‘‘any disclosure’’ for ‘‘a disclosure’’, and in subparagraph. (B)(ii) inserted ‘‘gross’’ before ‘‘mismanagement’’.

Subsec. (b)(9). Pub. L. 101-12, § 4(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ‘‘take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;’’.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 1122(a)(1) of Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

Section 315(c) of Pub. L. 104-197 provided that: ‘‘This section [amending this section and section 3303 of this title] shall take effect 30 days after the date of the enactment of this Act [Sept. 16, 1996].’’

#### EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

#### SAVINGS PROVISION

Pub. L. 105-339, § 6(d), Oct. 31, 1998, 112 Stat. 3188, provided that: ‘‘This section [amending this section and repealing section 1599c of Title 10, Armed Forces] shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of enactment of this Act [Oct. 31, 1998].’’

#### FEDERAL BENEFITS AND NON-DISCRIMINATION

Memorandum of President of the United States, June 17, 2009, 74 F.R. 29393, provided:

Memorandum for the Heads of Executive Departments and Agencies

Millions of hard-working, dedicated, and patriotic public servants are employed by the Federal Government as part of the civilian workforce, and many of these devoted Americans have same-sex domestic partners. Leading companies in the private sector are free to provide to same-sex domestic partners the same benefits they provide to married people of the opposite sex. Executive departments and agencies, however, may only provide benefits on that basis if they have legal authorization to do so. My Administration is not authorized by Federal law to extend a number of available Federal benefits to the same-sex partners of Federal employees. Within existing law, however, my Administration, in consultation with the Secretary of State, who oversees our Foreign Service employees, and the

Director of the Office of Personnel Management, who oversees human resource management for our civil service employees, has identified areas in which statutory authority exists to achieve greater equality for the Federal workforce through extension to same-sex domestic partners of benefits currently available to married people of the opposite sex. Extending available benefits will help the Federal Government compete with the private sector to recruit and retain the best and the brightest employees.

I hereby request the following:

**SECTION 1. Extension of Identified Benefits.** The Secretary of State and the Director of the Office of Personnel Management shall, in consultation with the Department of Justice, extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal employees where doing so can be achieved and is consistent with Federal law.

**SEC. 2. Review of Governmentwide Benefits.** The heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, shall conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees. The results of this review shall be reported within 90 days to the Director of the Office of Personnel Management, who, in consultation with the Department of Justice, shall recommend to me any additional measures that can be taken, consistent with existing law, to provide benefits to the same-sex domestic partners of Federal Government employees.

**SEC. 3. Promoting Compliance with Existing Law Requiring Federal Workplaces to be Free of Discrimination Based on Non-Merit Factors.** The Office of Personnel Management shall issue guidance within 90 days to all executive departments and agencies regarding compliance with, and implementation of, the civil service laws, rules, and regulations, including 5 U.S.C. 2302(b)(10), which make it unlawful to discriminate against Federal employees or applicants for Federal employment on the basis of factors not related to job performance.

**SEC. 4. General Provisions.** (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) Authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**SEC. 5. Publication.** The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

#### EXTENSION OF BENEFITS TO SAME-SEX DOMESTIC PARTNERS OF FEDERAL EMPLOYEES

Memorandum of President of the United States, June 2, 2010, 75 F.R. 32247, provided:

Memorandum for the Heads of Executive Departments and Agencies

For far too long, many of our Government's hard-working, dedicated LGBT employees have been denied equal access to the basic rights and benefits their colleagues enjoy. This kind of systemic inequality undermines the health, well-being, and security not just of our Federal workforce, but also of their families and communities. That is why, last June, I directed the heads of executive departments and agencies (agencies), in consultation with the Office of Personnel Man-

agement (OPM), to conduct a thorough review of the benefits they provide and to identify any that could be extended to LGBT employees and their partners and families. Although legislative action is necessary to provide full equality to LGBT Federal employees, the agencies have identified a number of benefits that can be extended under existing law. OPM, in consultation with the Department of Justice, has provided me with a report recommending that all of the identified benefits be extended.

Accordingly, I hereby direct the following:

**SECTION 1. Immediate Actions To Extend Benefits.** Agencies should immediately take the following actions, consistent with existing law, in order to extend benefits to the same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees:

(a) The Director of OPM should take appropriate action to:

(i) clarify that the children of employees' same-sex domestic partners fall within the definition of "child" for purposes of Federal child-care subsidies, and, where appropriate, for child-care services;

(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as "family members";

(iii) issue a proposed rule that would clarify that employees' same-sex domestic partners qualify as "family members" for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990;

(iv) issue a proposed rule that would add a Federal retiree's same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8339(k)(1), 8420;

(v) clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522–5523; Folio: 1632 [sic]

(vi) amend its guidance on implementing President Clinton's April 11, 1997, memorandum to heads of executive departments and agencies on "Expanded Family and Medical Leave Policies" to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs, may be used to meet the needs of an employee's same-sex domestic partner or the same-sex domestic partner's children; and

(vii) clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

(b) The Administrator of General Services should take appropriate action to amend the definitions of "immediate family" and "dependent" appearing in the Federal Travel Regulations, 41 C.F.R. Chs. 300–304, to include same-sex domestic partners and their children, so that employees and their domestic partners and children can obtain the full benefits available under applicable law, including certain travel, relocation, and subsistence payments.

(c) All agencies offering any of the benefits specified by OPM in implementing guidance under section 3 of this memorandum, including credit union membership, access to fitness facilities, and access to planning and counseling services, should take all appropriate action to provide the same level of benefits that is provided to employees' spouses and their children to employees' same-sex domestic partners and their children.

(d) All agencies with authority to provide benefits to employees outside of the context of title 5, United States Code should take all appropriate actions to ensure that the benefits being provided to employees' spouses and their children are also being provided, at an equivalent level wherever permitted by law, to their employees' same-sex domestic partners and their children.

**SEC. 2. Continuing Obligation To Provide New Benefits.** In the future, all agencies that provide new benefits to the spouses of Federal employees and their children should, to the extent permitted by law, also provide them to the same-sex domestic partners of their employees and those same-sex domestic partners' children. This section applies to appropriated and nonappropriated fund instrumentalities of such agencies.

**SEC. 3. Monitoring and Guidance.** The Director of OPM shall monitor compliance with this memorandum, and may instruct agencies to provide the Director with reports on the status of their compliance, and prescribe the form Folio: 1633 [sic] and manner of such reports. The Director of OPM shall also issue guidance to ensure consistent and appropriate implementation.

**SEC. 4. Reporting.** By April 1, 2011, and annually thereafter, the Director of OPM shall provide the President with a report on the progress of the agencies in implementing this memorandum until such time as all recommendations have been appropriately implemented.

**SEC. 5. General Provisions.** (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law or Executive Order to an agency, or the head thereof; or  
 (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**SEC. 6. Publication.** The Director of OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

### **§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation**

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

- (1) a 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.

For the purpose of this subsection, “personnel action” means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with

applicable provisions of sections 1214 and 1221 of this title.

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1117; amended Pub. L. 101-12, §9(a)(1), Apr. 10, 1989, 103 Stat. 34.)

#### AMENDMENTS

1989—Subsec. (c). Pub. L. 101-12 substituted “applicable provisions of sections 1214 and 1221” for “the provisions of section 1206”.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

### DELEGATION OF RESPONSIBILITIES CONCERNING FBI EMPLOYEES UNDER THE CIVIL SERVICE REFORM ACT OF 1978

Memorandum of President of the United States, Apr. 14, 1997, 62 F.R. 23123, provided:

Memorandum for the Attorney General

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Attorney General the functions concerning employees of the Federal Bureau of Investigation vested in the President by section 101(a) of the Civil Service Reform Act of 1978 (Public Law 95-454), as amended by the Whistleblower Protection Act of 1989 (Public Law 101-12), and codified at section 2303(c) of title 5, United States Code, and direct the Attorney General to establish appropriate processes within the Department of Justice to carry out these functions. Not later than March 1 of each year, the Attorney General shall provide a report to the President stating the number of allegations of reprisal received during the preceding calendar year, the disposition of each allegation resolved during the preceding calendar year, and the number of unresolved allegations pending as of the end of the calendar year.

All of the functions vested in the President by section 2303(c) of title 5, United States Code, and delegated to the Attorney General, may be redelegated, as appropriate, provided that such functions may not be redelegated to the Federal Bureau of Investigation.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

### **§ 2304. Responsibility of the Government Accountability Office**

If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1118; amended Pub. L. 102-378, §2(6), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 104-66, title II, §2181(e), Dec. 21, 1995, 109 Stat. 732; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

#### AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in section catchline and text.

1995—Pub. L. 104-66 struck out subsec. (a) designation before “If requested by” and struck out subsec. (b) which read as follows: “The General Accounting Office

shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

“(1) significant actions taken by the Board to carry out its functions under this title; and

“(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.”

1992—Subsec. (b). Pub. L. 102-378 substituted “The” for “the” at beginning of first sentence.

#### § 2305. Coordination with certain other provisions of law

No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled “An Act to provide certain administrative authorities for the National Security Agency, and for other purposes”, approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled “An Act to amend the Internal Security Act of 1950”, approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831-835).

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.)

#### REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), referred to in text, is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to section 403a et seq. of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.

The Act entitled “An Act to provide certain administrative authorities for the National Security Agency, and for other purposes”, approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), referred to in text, is Pub. L. 86-36, May 29, 1959, 73 Stat. 63, as amended, and is set out as a note under section 402 of Title 50. For complete classification of this Act to the Code, see Tables.

The Act entitled “An Act to amend the Internal Security Act of 1950”, approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831-835), referred to in text, is act Sept. 23, 1950, ch. 1024, title III, as added Mar. 26, 1964, Pub. L. 88-290, 78 Stat. 168, which is classified principally to subchapter III (§ 831 et seq.) of chapter 23 of Title 50. For complete classification of this Act to the Code, see Tables.

### CHAPTER 29—COMMISSIONS, OATHS, RECORDS, AND REPORTS

#### SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS

Sec.	
2901.	Commission of an officer.
2902.	Commission; where recorded.
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#### SUBCHAPTER II—REPORTS

2951.	Reports to the Office of Personnel Management.
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Sec.

2954. Information to committees of Congress on request.

#### AMENDMENTS

1978—Pub. L. 95-454, title IX, § 906(a)(16), Oct. 13, 1978, 92 Stat. 1226, substituted “Office of Personnel Management” for “Civil Service Commission” in item 2951.

#### SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS

##### § 2901. Commission of an officer

The President may make out and deliver, after adjournment of the Senate, the commission of an officer whose appointment has been confirmed by the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 411.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 10.	R.S. § 1773.

The words “confirmed by” are substituted for “advised and consented to”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

##### § 2902. Commission; where recorded

(a) Except as provided by subsections (b) and (c) of this section, the Secretary of State shall make out and record, and affix the seal of the United States to, the commission of an officer appointed by the President. The seal of the United States may not be affixed to the commission before the commission has been signed by the President.

(b) The commission of an officer in the civil service or uniformed services under the control of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of a military department, the Secretary of the Interior, the Secretary of Homeland Security, or the Secretary of the Treasury shall be made out and recorded in the department in which he is to serve under the seal of that department. The departmental seal may not be affixed to the commission before the commission has been signed by the President.

(c) The commissions of judicial officers and United States attorneys and marshals, appointed by the President, by and with the advice and consent of the Senate, and other commissions which before August 8, 1888, were prepared at the Department of State on the requisition of the Attorney General, shall be made out and recorded in the Department of Justice under the seal of that department and countersigned by the Attorney General. The departmental seal may not be affixed to the commission before the commission has been signed by the President.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 411; Pub. L. 94-183, § 2(3), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 109-241, title IX, § 902(a)(2), July 11, 2006, 120 Stat. 566.)

**SUBCHAPTER VII—MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS**

**§ 7371. Mandatory removal from employment of law enforcement officers convicted of felonies**

(a) In this section, the term—

(1) “conviction notice date” means the date on which an agency that employs a law enforcement officer has notice that the officer has been convicted of a felony that is entered by a Federal or State court, regardless of whether that conviction is appealed or is subject to appeal; and

(2) “law enforcement officer” has the meaning given that term under section 8331(20) or 8401(17).

(b) Any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

(2) The procedures under section 7513(b)(2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether—

(A) the employee is a law enforcement officer;

(B) the employee was convicted of a felony;

or

(C) the conviction was overturned on appeal.

(3) A removal required under this section shall occur on the date specified in subsection (b) regardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.

(Added Pub. L. 106-554, §1(a)(3) [title VI, §639(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-168.)

**EFFECTIVE DATE**

Pub. L. 106-554, §1(a)(3) [title VI, §639(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-168, provided that: “The amendments made by this section [enacting this sub-

chapter] shall take effect 30 days after the date of enactment of this Act [Dec. 21, 2000] and shall apply to any conviction of a felony entered by a Federal or State court on or after that date.”

**CHAPTER 75—ADVERSE ACTIONS**

**SUBCHAPTER I—SUSPENSION OF<sup>1</sup> 14 DAYS OR LESS**

Sec.

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| 7501. | Definitions.         |
| 7502. | Actions covered.     |
| 7503. | Cause and procedure. |
| 7504. | Regulations.         |

**SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLough FOR 30 DAYS OR LESS**

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| 7511. | Definitions; application. |
| 7512. | Actions covered.          |
| 7513. | Cause and procedure.      |
| 7514. | Regulations.              |

**SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES**

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| 7521. | Actions against administrative law judges. |
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**SUBCHAPTER IV—NATIONAL SECURITY**

- |       |                           |
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| 7531. | Definitions.              |
| 7532. | Suspension and removal.   |
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**SUBCHAPTER V—SENIOR EXECUTIVE SERVICE**

- |       |                      |
|-------|----------------------|
| 7541. | Definitions.         |
| 7542. | Actions covered.     |
| 7543. | Cause and procedure. |

**AMENDMENTS**

1978—Pub. L. 95-454, title II, §204(b), title IV, §411(1), Oct. 13, 1978, 92 Stat. 1137, 1173, substituted “SUSPENSION OF 14 DAYS OR LESS” for “COMPETITIVE SERVICE” in subchapter I heading, substituted “Definitions” for “Cause; procedure; exception” in item 7501, added items 7502 to 7504, substituted “REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLough FOR 30 DAYS OR LESS” for “PREFERENCE ELIGIBLES” in subchapter II heading, inserted “; application” in item 7511, substituted “Actions covered” for “Cause; procedure; exception” in item 7512, added items 7513 and 7514, substituted “ADMINISTRATIVE LAW JUDGES” for “HEARING EXAMINERS” in subchapter III heading, substituted “Actions against administrative law judges” for “Removal” in item 7521, and added subchapter V heading and items 7541 to 7543.

**SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS**

**AMENDMENTS**

1978—Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1134, substituted “SUSPENSION FOR 14 DAYS OR LESS” for “COMPETITIVE SERVICE” in subchapter heading.

**§ 7501. Definitions**

For the purpose of this subchapter—

(1) “employee” means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) “suspension” means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

<sup>1</sup> So in original. Does not conform to subchapter heading.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1134.)

#### PRIOR PROVISIONS

A prior section 7501, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 527, related to removal or suspension without pay of an individual in the competitive service and procedures applicable to such removal or suspension, prior to repeal by Pub. L. 95-454, § 204(a).

#### EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-376, § 1, Aug. 17, 1990, 104 Stat. 461, provided that: "This Act [amending sections 4303, 7511, and 7701 of this title and enacting provisions set out as notes under section 4303 of this title] may be cited as the 'Civil Service Due Process Amendments'."

#### § 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1215 of this title.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101-12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

#### AMENDMENTS

1989—Pub. L. 101-12 substituted "1215" for "1206".

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

#### § 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting<sup>1</sup> the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

<sup>1</sup> So in original. Probably should be "affecting".

#### § 7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135.)

#### SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

##### AMENDMENTS

1978—Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135, substituted "REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS" for "PREFERENCE ELIGIBLES" in subchapter heading.

#### § 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) an individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

(i) in an Executive agency; or

(ii) in the United States Postal Service or Postal Regulatory Commission; and

(C) an individual in the excepted service (other than a preference eligible)—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

(2) "suspension" has the same meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is within the Central Intelligence Agency or the Government Accountability Office;

(8) whose position is within the United States Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;

(9) who is described in section 5102(c)(11) of this title; or

(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101-376, § 2(a), Aug. 17, 1990, 104 Stat. 461; Pub. L. 102-378, § 6(a), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 103-359, title V, § 501(l), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104-201, div. A, title XVI, § 1634(b), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-435, title VI, § 604(b), (f), Dec. 20, 2006, 120 Stat. 3241, 3242.)

#### REFERENCES IN TEXT

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (b)(6), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

#### PRIOR PROVISIONS

A prior section 7511, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 94-183, § 2(30), Dec. 31, 1975, 89 Stat. 1058, defined "preference eligible employee" and "adverse action" for purposes of this subchapter, prior to repeal by Pub. L. 95-454, § 204(a).

#### AMENDMENTS

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109-435, § 604(b), substituted "Postal Regulatory Commission" for "Postal Rate Commission".

Subsec. (b)(8). Pub. L. 109-435, § 604(f), substituted "Postal Regulatory Commission" for "Postal Rate Commission".

2004—Subsec. (b)(7). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1996—Subsec. (b)(8). Pub. L. 104-201 substituted "an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10" for "the National Security Agency, the Defense Intelligence Agency, the Central Imagery Office, or an intelligence activity of a military department covered under section 1590 of title 10".

1994—Subsec. (b)(8). Pub. L. 103-359 inserted "the Central Imagery Office," after "Defense Intelligence Agency".

1992—Subsec. (b)(7). Pub. L. 102-378, § 6(a)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;".

Subsec. (b)(10). Pub. L. 102-378, § 6(a)(2)-(4), added par. (10).

1990—Pub. L. 101-376 amended section generally. Prior to amendment, section read as follows:

"(a) For the purpose of this subchapter—

"(1) 'employee' means—

"(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee—

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

"(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

"(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office."

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104-201, set out as a note under section 1593 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 6(b) of Pub. L. 102-378 provided that:

"(1) The amendments made by subsection (a) [amending this section] shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act [Oct. 2, 1992].

“(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

“(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

“(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note) [Pub. L. 101-376], became ineligible to appeal such action to the Merit Systems Protection Board.

“(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

“(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board, the deadline for bringing an appeal under section 7512(d) or section 4303(e) of such title with respect to such action shall be the latter of—

“(i) the 60th day after the date of enactment of this Act; or

“(ii) the deadline which would otherwise apply if this paragraph had not been enacted.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-376 applicable with respect to any personnel action taking effect on or after Aug. 17, 1990, see section 2(c) of Pub. L. 101-376, set out as a note under section 4303 of this title.

#### EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

### § 7512. Actions covered

This subchapter applies to—

- (1) a removal;
- (2) a suspension for more than 14 days;
- (3) a reduction in grade;
- (4) a reduction in pay; and
- (5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1215 or 7521 of this title.

(Added Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1136; amended Pub. L. 101-12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

#### PRIOR PROVISIONS

A prior section 7512, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528, related to adverse action against a preference eligible employee and procedures applicable to such adverse action, prior to repeal by Pub. L. 95-454, §204(a).

#### AMENDMENTS

1989—Par. (E). Pub. L. 101-12 substituted “1215” for “1206”.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

### § 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1136.)

### § 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

(Added Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137.)

### SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

#### AMENDMENTS

1978—Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137, substituted “ADMINISTRATIVE LAW JUDGES” for “HEARING EXAMINERS” in subchapter heading.

### § 7521. Actions against administrative law judges

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

- (1) a removal;
- (2) a suspension;
- (3) a reduction in grade;
- (4) a reduction in pay; and
- (5) a furlough of 30 days or less;

but do not include—

- (A) a suspension or removal under section 7532 of this title;
- (B) a reduction-in-force action under section 3502 of this title; or
- (C) any action initiated under section 1215 of this title.

(Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1137; amended Pub. L. 101-12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

#### PRIOR PROVISIONS

A prior section 7521, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183, related to removal of an administrative law judge appointed under section 3105 of this title, prior to repeal by Pub. L. 95-454, § 204(a).

#### AMENDMENTS

1989—Subsec. (b)(C). Pub. L. 101-12 substituted “1215” for “1206”.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### SUBCHAPTER IV—NATIONAL SECURITY

##### **§ 7531. Definitions**

For the purpose of this subchapter, “agency” means—

- (1) the Department of State;
- (2) the Department of Commerce;
- (3) the Department of Justice;
- (4) the Department of Defense;
- (5) a military department;
- (6) the Coast Guard;
- (7) the Atomic Energy Commission;
- (8) the National Aeronautics and Space Administration; and
- (9) such other agency of the Government of the United States as the President designates in the best interests of national security.

The President shall report any designation to the Committees on the Armed Services of the Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 22-3.	Aug. 26, 1950, ch. 823, § 3, 64 Stat. 477.

Paragraphs (1)-(8) are supplied on authority of former section 22-1, which is carried in part into section 7532. The references to “the Foreign Service of the United States” and “several field services” are omitted as unnecessary since they are within the agencies concerned. The words “military departments” are substituted for

the enumeration of the military departments in view of the definition of “military department” in section 102.

The reference to the National Security Resources Board is omitted as the Board was abolished by 1953 Reorg. Plan No. 3, § 6, eff. June 12, 1953, 67 Stat. 636.

Paragraph (9) is restated to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

#### PANAMA CANAL AND PANAMA RAILROAD COMPANY

Ex. Ord. No. 10237, Apr. 27, 1951, 16 F.R. 3627, made the provisions of former sections 22-1 and 22-3 of this title [see Disposition Table preceding section 101 of this title] applicable to the Panama Canal Government and to the Panama Canal Company.

#### DESIGNATION OF NATIONAL SECURITY AGENCY, DEFENSE INTELLIGENCE AGENCY, AND DEFENSE MAPPING AGENCY AS “AGENCIES”

Memorandum of the President of the United States, May 23, 1988, 53 F.R. 26023, provided:

Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated “agencies” within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as “agencies” within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the Federal Register.

RONALD REAGAN.

#### **§ 7532. Suspension and removal**

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of an agency may remove an employee

suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

- (1) has a permanent or indefinite appointment;
- (2) has completed his probationary or trial period; and
- (3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 22–1 (less 3d–5th provisos).	Aug. 26, 1950, ch. 803, § 1 (less 3d–5th provisos), 64 Stat. 476. July 29, 1958, Pub. L. 85–568, § 301(c), 72 Stat. 432.

The application of this section is covered by the definition in section 7531.

In subsection (a), the words “Notwithstanding the provisions of section 652 of this title” are omitted but are carried into section 7501(c). The words “in his absolute discretion” are omitted as unnecessary in view of the permissive grant of authority. The word “reinstated” is omitted as it is commonly used in other statutes to denote action different from that referred to here.

In subsections (b) and (c), the words “remove” and “removal” are coextensive with and substituted for “terminate the employment”, “termination”, and “employment is terminated”, as appropriate.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### § 7533. Effect on other statutes

This subchapter does not impair the powers vested in the Atomic Energy Commission by chapter 23 of title 42, or the requirement in section 2201(d) of title 42 that adequate provision be made for administrative review of a determination to dismiss an employee of the Atomic Energy Commission.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 22–2.	Aug. 26, 1950, ch. 803, § 2, 64 Stat. 477.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

#### SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

##### § 7541. Definitions

For the purpose of this subchapter—

(1) “employee” means a career appointee in the Senior Executive Service who—

(A) has completed the probationary period prescribed under section 3393(d) of this title; or

(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

(2) “suspension” has the meaning set forth in section 7501(2) of this title.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174.)

#### EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

##### § 7542. Actions covered

This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1215 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, § 1704(d)(1), Aug. 13, 1981, 95 Stat. 758; Pub. L. 101–12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

#### AMENDMENTS

1989—Pub. L. 101–12 substituted “1215” for “1206”.

1981—Pub. L. 97–35 inserted reference to section 3595 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

##### § 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take

an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95-454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97-35, title XVII, § 1704(d)(2), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98-615, title III, § 304(c), Nov. 8, 1984, 98 Stat. 3219.)

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-615 inserted reference to failure to accept a directed reassignment or to accompany a position in a transfer of function.

1981—Subsec. (a). Pub. L. 97-35 substituted “misconduct, neglect of duty, or malfeasance” for “such cause as will promote the efficiency of the service”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3395 of this title.

## CHAPTER 77—APPEALS

Sec.	
7701.	Appellate procedures.
7702.	Actions involving discrimination.
7703.	Judicial review of decisions of the Merit Systems Protection Board.

#### AMENDMENTS

1978—Pub. L. 95-454, title II, § 205, Oct. 13, 1978, 92 Stat. 1138, substituted “Appellate procedures” for “Appeals of preference eligibles” in item 7701, and added items 7702 and 7703.

### **§ 7701. Appellate procedures**

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

(1) to a hearing for which a transcript will be kept; and

(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b)(1) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless—

(i) the deciding official determines that the granting of such relief is not appropriate; or

(ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and

(II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

(C) Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.

(3) With respect to an appeal from an adverse action covered by subchapter V of chapter 75, authority to mitigate the personnel action involved shall be available, subject to the same

From: **femamax@gmail.com** <femamax@gmail.com>  
To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
Subject: PART 752-ADVERSE ACTIONS  
Date: 23.12.2019 02:10:21 (+01:00)  
Attachments: PART 752-ADVERSE ACTIONS.pdf (9 pages)

## § 736.201

### Subpart B—Investigative Requirements

#### § 736.201 Responsibilities of OPM and other Federal agencies.

(a) Unless provided otherwise by law, the investigation of persons entering or employed in the competitive service, or by career appointment in the Senior Executive Service, is the responsibility of OPM.

(b) Requests for delegated investigating authority. Agencies may request delegated authority from OPM to conduct or contract out investigations of persons entering or employed in the competitive service or by career appointment in the Senior Executive Service. Such requests shall be made in writing by agency heads, or designees, and specify the reason(s) for the request.

(c) Timing of investigations. Investigations required for positions must be initiated within 14 days of placement in the position except for: Positions designated Critical-Sensitive under part 732 of this chapter must be completed preplacement, or post-placement with approval of a waiver in accordance with § 732.202(a) of this chapter; and for positions designated Special-Sensitive under part 732 of this chapter must be completed preplacement.

## PART 752—ADVERSE ACTIONS

### Subpart A [Reserved]

#### Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

Sec.

- 752.201 Coverage.
- 752.202 Standard for action.
- 752.203 Procedures.

### Subpart C [Reserved]

#### Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

- 752.401 Coverage.
- 752.402 Definitions.
- 752.403 Standard for action.
- 752.404 Procedures.
- 752.405 Appeal and grievance rights.
- 752.406 Agency records.

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### Subpart E [Reserved]

#### Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

- 752.601 Coverage.
- 752.602 Definitions.
- 752.603 Standard for action.
- 752.604 Procedures.
- 752.605 Appeal rights.
- 752.606 Agency records.

AUTHORITY: 5 U.S.C. 7504, 7514, and 7543.

SOURCE: 74 FR 63532, Dec. 4, 2009, unless otherwise noted.

### Subpart A [Reserved]

#### Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

##### § 752.201 Coverage.

(a) *Adverse actions covered.* This subpart covers suspension for 14 days or less.

(b) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee with competitive status who occupies a position under Schedule B of part 213 of this chapter;

(4) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position;

(5) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(6) An employee of the Government Printing Office.

(c) *Exclusions.* This subpart does not apply to a suspension for 14 days or less:

(1) Of an administrative law judge under 5 U.S.C. 7521;

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(2) Taken for national security reasons under 5 U.S.C. 7532;

(3) Taken under any other provision of law which excepts the action from subchapter I, chapter 75, of title 5, U.S. Code;

- (4) Of a reemployed annuitant; or
- (5) Of a National Guard Technician.

(d) *Definitions.* In this subpart—

*Current continuous employment* means a period of employment immediately preceding a suspension action without a break in Federal civilian employment of a workday.

*Day* means a calendar day.

*Similar positions* means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

*Suspension* means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

**§ 752.202 Standard for action.**

(a) An agency may take action under this subpart for such cause as will promote the efficiency of the service as set forth in 5 U.S.C. 7503(a).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

**§ 752.203 Procedures.**

(a) *Statutory entitlements.* An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7503(b).

(b) *Notice of proposed action.* The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(c) *Employee's answer.* The employee must be given a reasonable time, but not less than 24 hours, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) *Representation.* An employee covered by this subpart is entitled to be

represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(e) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official.

(2) The agency must specify in writing the reason(s) for the decision and advise the employee of any grievance rights under paragraph (f) of this section. The agency must deliver the notice of decision to the employee on or before the effective date of the action.

(f) *Grievances.* The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

(g) *Agency records.* The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon their request, the following documents:

- (1) Notice of the proposed action;
- (2) Employee's written reply, if any;
- (3) Summary of the employee's oral reply, if any;
- (4) Notice of decision; and
- (5) Any order effecting the suspension, together with any supporting material.

**Subpart C [Reserved]**

## § 752.401

### **Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less**

#### **§ 752.401 Coverage.**

- (a) *Adverse actions covered.* This subpart applies to the following actions:
- (1) Removals;
  - (2) Suspensions for more than 14 days, including indefinite suspensions;
  - (3) Reductions in grade;
  - (4) Reductions in pay; and
  - (5) Furloughs of 30 days or less.
- (b) *Actions excluded.* This subpart does not apply to:
- (1) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1215;
  - (2) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is to the grade held immediately before becoming a supervisor or manager;
  - (3) A reduction-in-force action under 5 U.S.C. 3502;
  - (4) A reduction in grade or removal under 5 U.S.C. 4303;
  - (5) An action against an administrative law judge under 5 U.S.C. 7521;
  - (6) A suspension or removal under 5 U.S.C. 7532;
  - (7) Actions taken under any other provision of law which excepts the action from subchapter II of chapter 75 of title 5, United States Code;
  - (8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;
  - (9) A voluntary action by the employee;
  - (10) Action taken or directed by the Office of Personnel Management under part 731 of this chapter;
  - (11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
  - (12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

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(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment; or

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation, including a reduction necessary to comply with the amendments made by Public Law 108-411, regarding pay-setting under the General Schedule and Federal Wage System and regulations implementing those amendments.

(c) *Employees covered.* This subpart covers:

(1) A career or career conditional employee in the competitive service who is not serving a probationary or trial period;

(2) An employee in the competitive service who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at section 105 of title 5, United States Code, the U.S. Postal Service, or the Postal Regulatory Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100-90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at section 105 of title 5, United States Code, and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

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(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position;

(8) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(9) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in section 8337(h)(1) of title 5, United States Code, who is employed under section 709(a) of title 32, United States Code;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency or the Government Accountability Office;

(8) An employee of the Veterans Health Administration (Department of Veterans Affairs) in a position which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless the employee was appointed to the position under section 7401(3) of title 38, United States Code;

(9) A nonpreference eligible employee with the U.S. Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or any other intelligence compo-

nent of the Department of Defense (as defined in section 1614 of title 10, United States Code), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, United States Code;

(10) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(11) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service, unless he or she meets the requirements of paragraph (c)(5) of this section;

(12) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code; and

(13) An employee in the competitive service serving a probationary or trial period, unless he or she meets the requirements of paragraph (c)(2) of this section.

**§ 752.402 Definitions.**

In this subpart—

*Current continuous employment* means a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday.

*Day* means a calendar day.

*Furlough* means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

*Grade* means a level of classification under a position classification system.

*Indefinite suspension* means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

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*Pay* means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

*Similar positions* means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

*Suspension* means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

### § 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action or an indefinite suspension, under this subpart only for such cause as will promote the efficiency of the service.

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

### § 752.404 Procedures.

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Notice of proposed action.* (1) An employee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in his or her regular position during the advance notice period. In

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those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of paragraph (d)(1) of this section; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

(c) *Employee's answer.* (1) An employee may answer orally and in writing except as provided in paragraph (c)(2) of this section. The agency must give the employee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.

(2) The agency will designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under 5 U.S.C. 7513(c), the agency may, in its regulations, provide a hearing in place of or in addition to the opportunity for written and oral answer.

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(3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee must be given a reasonable time to furnish medical documentation (as defined in § 339.104 of this chapter) of the condition. Whenever possible, the employee will supply such documentation within the time limits allowed for an answer.

(d) *Exceptions.* (1) Section 7513(b) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(2) The advance written notice and opportunity to answer are not required for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* Section 7513(b)(3) of title 5, U.S. Code, provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the employee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide infor-

mation concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the employee of any appeal or grievance rights under § 752.405 of this part. The agency must deliver the notice of decision to the employee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an employee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an employee.

**§ 752.405 Appeal and grievance rights.**

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, an employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under 5 U.S.C. 7701, but not both. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

**§ 752.406 Agency records.**

The agency must maintain copies of, and will furnish to the Merit Systems

## § 752.601

Protection Board and to the employee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Employee's written reply, if any;
- (c) Summary of the employee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

### Subpart E [Reserved]

## Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

### § 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Actions excluded.* (1) An agency may not take a suspension action of 14 days or less.

(2) This subpart does not apply to actions taken under 5 U.S.C. 1215, 3592, 3595, or 7532.

(c) *Employees covered.* This subpart covers the following appointees:

(1) A career appointee—

(i) Who has completed the probationary period in the Senior Executive Service;

(ii) Who is not required to serve a probationary period in the Senior Executive Service; or

(iii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

(2) A limited term or limited emergency appointee—

(i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the Senior Executive Service; and

(ii) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

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(d) *Employees excluded.* This subpart does not cover an appointee who is serving as a reemployed annuitant.

### § 752.602 Definitions.

In this subpart—

*Career appointee*, *limited term appointee*, and *limited emergency appointee* have the meaning given in 5 U.S.C. 3132(a).

*Day* means calendar day.

*Suspension* has the meaning given in 5 U.S.C. 7501(2).

### § 752.603 Standard for action.

(a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by 5 U.S.C. 2302.

### § 752.604 Procedures.

(a) *Statutory entitlements.* An appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b).

(b) *Notice of proposed action.* (1) An appointee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to paragraph (d) of this section. The notice must state the specific reason(s) for the proposed action, and inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice.

(2) Under ordinary circumstances, an appointee whose removal has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

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(i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;

(ii) Allowing the appointee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the appointee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of paragraph (d) of this section; or

(iv) Placing the appointee in a paid, nonduty status for such time as is necessary to effect the action.

(c) *Appointee's answer.* (1) The appointee may answer orally and in writing except as provided in paragraph (c)(2) of this section. The agency must give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is in an active duty status. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.

(2) The agency will designate an official to hear the appointee's oral answer who has authority either to make or to recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

(3) If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee must be given reasonable time to furnish medical documentation (as defined in § 339.104 of this chapter) of the condition. Whenever possible, the appointee will supply such documentation within the time limits allowed for an answer.

(d) *Exception.* Section 7543(b)(1) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(e) *Representation.* Section 7543(b)(3) of title 5, U.S. Code, provides that an appointee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an appointee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the appointee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the appointee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the appointee of any appeal rights under § 752.605 of this part. The agency

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must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an appointee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

### **§ 752.605 Appeal rights.**

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

### **§ 752.606 Agency records.**

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the appointee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Appointee's written reply, if any;
- (c) Summary of the appointee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

## **PART 754 [RESERVED]**

## **PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM**

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1945–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1969 Comp., p. 306.

### **§ 771.101 Continuation of Grievance Systems.**

Each administrative grievance system in operation as of October 11, 1995, that has been established under former regulations under this part must remain in effect until the system is either modified by the agency or re-

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placed with another dispute resolution process.

[60 FR 47040, Sept. 11, 1995]

## **PART 772—INTERIM RELIEF**

### **Subpart A—General**

Sec.

772.101 Basic authority.

772.102 Interim personnel actions.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101-12.

SOURCE: 57 FR 3712, Jan. 31, 1992, unless otherwise noted.

### **Subpart A—General**

#### **§ 772.101 Basic authority.**

This part establishes a mechanism for agencies to provide interim relief to employees and applicants for employment who prevail in an initial decision issued by the Merit Systems Protection Board (MSPB) as required by the *Whistleblower Protection Act of 1989*, Pub. L. 101-12 (codified at 5 U.S.C. 7701(b)(2)(A)). The interim relief provisions of the law are applicable whether or not alleged reprisal for whistleblowing is at issue in an appeal to MSPB.

#### **§ 772.102 Interim personnel actions.**

When an employee or applicant for employment appeals an action to MSPB and the appeal results in an initial decision by an MSPB administrative judge granting interim relief under 5 U.S.C. 7701(b)(2)(A) and a petition for review of the initial decision is filed (or will be filed) with the full Board under 5 U.S.C. 7701(e)(1)(A), the agency shall provide the relief ordered in the initial decision by taking an interim personnel action subject to the following terms:

(a) Interim personnel actions shall be made effective upon the date of issuance of the initial decision and must be initiated on or before the date of a petition for review by the agency or within a reasonable period after the date it becomes aware of a petition for review by the appellant;

(b) The relief provided by interim personnel actions shall end:

From: **femamax@gmail.com** <femamax@gmail.com>  
To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
Subject: statute  
Date: 23.12.2019 01:56:56 (+01:00)  
Attachments: CFR-2012-title5-vol1-part432-highlighted.pdf (6 pages)

the rate of basic pay for a senior executive covered by the provisionally certified system at a rate that does not exceed the rate for level II of the Executive Schedule (consistent with 5 CFR part 534, subpart D, when effective) and pay senior employees covered by provisionally certified systems aggregate compensation in the certified calendar year in an amount up to the Vice President's salary under 3 U.S.C. 104 (consistent with 5 CFR part 530, subpart B).

(3) An agency must resubmit an application requesting provisional certification for every calendar year for which it intends to maintain provisional certification. An agency with a provisionally certified appraisal system(s) may request that OPM, with OMB concurrence, grant full certification upon a showing that its performance appraisal systems for senior executives and senior professionals, as applicable, meet the certification criteria in § 430.404 and the documentation requirements in this section, particularly with respect to the implementation and administration of the system(s) over at least two consecutive performance appraisal periods.

(g) *Annual reporting requirement.* Agencies with certified appraisal systems must provide OPM with a general summary of the annual summary ratings and ratings of record, as applicable, and rates of basic pay, pay adjustments, cash awards, and aggregate total compensation (including any lump-sum payments in excess of the applicable aggregate limitation on pay that were paid in the current calendar year as required by § 530.204) for their senior employees covered by a certified appraisal system at the conclusion of each appraisal period that ends during a calendar year for which the certification is in effect, in accordance with OPM instructions.

(h) *Suspension of certification.* (1) When OPM determines that an agency's certified appraisal system is no longer in compliance with certification criteria, OPM, with OMB concurrence, may suspend such certification, as provided in paragraph (c)(3) of this section.

(2) An agency's system certification is automatically suspended when OPM

withdraws performance appraisal system approval or mandates corrective action because of misapplication of the system as authorized under §§ 430.210(c), 430.312(c), and 430.403(e).

(3) OPM will notify the head of the agency at least 30 calendar days in advance of the suspension and the reason(s) for the suspension, as well as any expected corrective action. Upon such notice, and until its system certification is reinstated, the agency must set a senior executive's rate of basic pay under 5 CFR part 534, subpart D, when effective, at a rate that does not exceed the rate for level III of the Executive Schedule. While certification is suspended, an agency must limit aggregate compensation received in a calendar year by a senior employee to the rate for level I of the Executive Schedule. Pay adjustments, cash awards, and levels of pay in effect prior to that notice will remain in effect unless OPM finds that any such decision and subsequent action was in violation of law, rule, or regulation.

(4) OPM, with OMB concurrence, may reinstate an agency's suspended certification only after the agency has taken appropriate corrective action.

(5) OPM may reinstate the certification of an appraisal system that has been automatically suspended under paragraph (h)(2) of this section upon the agency's compliance with the applicable OPM-mandated corrective action(s).

## PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

Sec.

- 432.101 Statutory authority.
- 432.102 Coverage.
- 432.103 Definitions.
- 432.104 Addressing unacceptable performance.
- 432.105 Proposing and taking action based on unacceptable performance.
- 432.106 Appeal and grievance rights.
- 432.107 Agency records.

AUTHORITY: 5 U.S.C. 4303, 4305.

SOURCE: 54 FR 26179, June 21, 1989, unless otherwise noted.

## § 432.101

### § 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the provisions of this part based solely on performance at the unacceptable level. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, United States Code, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of 5 U.S.C. 7501 *et seq.*, may also be used to reduce in grade or remove employees. See part 752 of this chapter.)

[58 FR 65533, Dec. 15, 1993]

### § 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of employees based on unacceptable performance.

(b) *Actions excluded.* This part does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(5) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

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(6) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(7) An action taken under 5 U.S.C. 7532 in the interest of national security;

(8) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

(9) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under part 359 of this chapter;

(10) A reduction-in-force governed by part 351 of this chapter;

(11) A voluntary action by the employee;

(12) A performance-based action taken under part 752 of this chapter;

(13) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration;

(14) A termination in accordance with terms specified as conditions of employment at the time the appointment was made; and

(15) An involuntary retirement because of disability under part 831 of this chapter.

(c) *Agencies covered.* This part applies to:

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation; and

(4) The Government Printing Office.

(d) *Agencies excluded.* This part does not apply to:

(1) A Government corporation;

(2) The Central Intelligence Agency;

(3) The Defense Intelligence Agency;

(4) The National Security Agency;

(5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;

**Office of Personnel Management****§ 432.103**

- (6) The General Accounting Office;
  - (7) The U.S. Postal Service; and
  - (8) The Postal Rate Commission.
- (e) *Employees covered.* This part applies to individuals employed in or under a covered agency as specified at § 432.102(c) except as listed in § 432.102(f).
- (f) *Employees excluded.* This part does not apply to:
- (1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;
  - (2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;
  - (3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;
  - (4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
  - (5) An individual in the Foreign Service of the United States;
  - (6) An employee who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless such employee was appointed to such a position under section 7401(3) of title 38;
  - (7) An administrative law judge appointed under 5 U.S.C. 3105;
  - (8) An individual in the Senior Executive Service;
  - (9) An individual appointed by the President;
  - (10) An employee occupying a position in Schedule C as authorized under part 213 of this chapter;
  - (11) A reemployed annuitant;
  - (12) A technician in the National Guard described in 5 U.S.C. 8337(h)(1), employed under section 709(b) of title 32;
  - (13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and

(14) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).

[54 FR 26179, June 21, 1989, as amended at 57 FR 10125, Mar. 24, 1992; 57 FR 20042, May 11, 1992; 58 FR 13192, Mar. 10, 1993; 58 FR 65533, Dec. 15, 1993]

**§ 432.103 Definitions.**

For the purpose of this part—

(a) *Acceptable performance* means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical element(s) at issue.

(b) *Critical element* means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

(c) *Current continuous employment* means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) *Opportunity to demonstrate acceptable performance* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

(e) *Reduction in grade* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(f) *Removal* means the involuntary separation of an employee from employment with an agency.

(g) *Similar positions* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

(h) *Unacceptable performance* means performance of an employee that fails

## **§ 432.104**

to meet established performance standards in one or more critical elements of such employee's position.

[54 FR 26179, June 21, 1989, as amended at 54 FR 49076, Nov. 29, 1989; 55 FR 25950, June 26, 1990; 57 FR 23045, June 1, 1992; 57 FR 60717, Dec. 22, 1992; 58 FR 65534, Dec. 15, 1993; 60 FR 43946, Aug. 23, 1995]

### **§ 432.104 Addressing unacceptable performance.**

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

[55 FR 25950, June 26, 1990, as amended at 58 FR 65534, Dec. 15, 1993]

### **§ 432.105 Proposing and taking action based on unacceptable performance.**

(a) *Proposing action based on unacceptable performance.* (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in 1 or more of the critical elements for which the employee was afforded an oppor-

## **5 CFR Ch. I (1-1-12 Edition)**

tunity to demonstrate acceptable performance.

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(1) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(2) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(3) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(4) To consider reasonable accommodation of a handicapping condition;

**Office of Personnel Management****§ 432.106**

(5) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(6) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification of unacceptable performance under § 432.104. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.105(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of part 339 of this chapter, and shall be aware of the affirmative

obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under § 432.105(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

[54 FR 26179, June 21, 1989. Redesignated and amended at 54 FR 49076, Nov. 29, 1989. Redesignated and amended at 58 FR 65534, Dec. 15, 1993]

**§ 432.106 Appeal and grievance rights.**

(a) *Appeal rights.* An employee covered under § 432.102(e) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and

## § 432.107

has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(4) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of this chapter.

(b) *Grievance rights.* (1) A bargaining unit employee covered under § 432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.g.*, is not excluded by the parties to the collective bargaining agreement) and the employee is:

(i) In the competitive service and has completed a probationary or trial period.

(ii) In the competitive service, serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(iv) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of the chapter.

(2) 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) *Selection of forum.* As provided at 5 U.S.C. 7121(e)(1), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Like-

## 5 CFR Ch. I (1-1-12 Edition)

wise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal on the matter with the Merit Systems Protection Board.

[54 FR 26179, June 21, 1989. Redesignated at 54 FR 49076, Nov. 29, 1989; 57 FR 20043, May 11, 1992; 58 FR 13192, Mar. 10, 1993. Redesignated at 58 FR 65534, Dec. 15, 1993]

## § 432.107 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not affected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided in accordance with § 432.105(a)(4)(i), any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

[55 FR 25950, June 26, 1990, as amended at 58 FR 65534, Dec. 15, 1993]

# PART 451—AWARDS

## Subpart A—Agency Awards

### Sec.

- 451.101 Authority and coverage.
- 451.102 Definitions.
- 451.103 Agency award program(s).
- 451.104 Awards.
- 451.105 Award restrictions.
- 451.106 Agency responsibilities.
- 451.107 OPM responsibilities.

From: **Meindl, Max** <max.meindl@fema.dhs.gov>  
To: **Gause, Jacqueline** <jacqueline.gause@fema.dhs.gov>; **David, Patricia** <Patricia.David@fema.dhs.gov>  
**Wick, Timothy** <Timothy.Wick@fema.dhs.gov>; **Terry, Detra** <detra.terry@fema.dhs.gov>; **Alexander, Dennis** <dennis.alexander@fema.dhs.gov>; **brent@guerradays.com** <brent@guerradays.com>; **FEMA-EqualRights** <FEMA-EqualRights@fema.dhs.gov>  
CC:  
Subject: RE: FMLA Recertification - M. Meindl  
Date: 23.10.2019 18:37:12 (+02:00)

Thanks JG, no problem, I'm working on an update with my providers, to appropriately capture/document/list all of the existing/new/challenging/interesting, issues that have manifested since the surgery. Appreciate your assistance..

---

Max J Meindl, PMP  
Program Delivery Manager | Houston TRO  
DHS | FEMA-Recovery Directorate  
Public Assistance Division  
FEMA/HQ  
202-374-9426  
[max.meindl@fema.dhs.gov](mailto:max.meindl@fema.dhs.gov)



FEMA

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---

**From:** Gause, Jacqueline <jacqueline.gause@fema.dhs.gov>  
**Sent:** Wednesday, October 23, 2019 1:09 PM  
**To:** Meindl, Max <max.meindl@fema.dhs.gov>; David, Patricia <Patricia.David@fema.dhs.gov>  
**Cc:** Wick, Timothy <Timothy.Wick@fema.dhs.gov>; Terry, Detra <detra.terry@fema.dhs.gov>; Alexander, Dennis <dennis.alexander@fema.dhs.gov>; brent@guerradays.com; FEMA-EqualRights <FEMA-EqualRights@fema.dhs.gov>  
**Subject:** RE: FMLA Recertification - M. Meindl

Good afternoon,

The FMLA update process being applied in this situation is consistent with policy. Your approved FMLA condition of record is the matter being addressed as it relates to the updates being requested. You have said in your response that you are not scheduled to see the physician until next year and that you will request an appointment and attempt to get one as soon as possible. I will follow up with you in seven (7) days to see if you were able to get an appointment for this matter.

In the meantime I will recommend to your supervisor to continue to approve your current FMLA request for the said condition until you have an appointment scheduled. The specifics of the concerns is that your current FMLA is approved for 1-3 occurrences every month and you have exceeded the frequency so your management is attempting to obtain updated information.

Thanks for your cooperation with this matter. Please let me know if you have additional questions or concerns.

Regards,

*Jacqueline Gause, MSc*

Human Resources  
Federal Emergency Management Agency  
Department of Homeland Security  
Hurricane Harvey-DR4332-TX  
Texas Recovery Office  
Houston, TX  
Mobile: 202-322-6241

---

**From:** Meindl, Max <max.meindl@fema.dhs.gov>  
**Sent:** Tuesday, October 22, 2019 4:22 PM  
**To:** Gause, Jacqueline <jacqueline.gause@fema.dhs.gov>; David, Patricia <Patricia.David@fema.dhs.gov>  
**Cc:** Wick, Timothy <Timothy.Wick@fema.dhs.gov>; Terry, Detra <detra.terry@fema.dhs.gov>; Alexander, Dennis <dennis.alexander@fema.dhs.gov>; brent@guerradays.com; FEMA-EqualRights <FEMA-EqualRights@fema.dhs.gov>  
**Subject:** RE: FMLA Recertification - M. Meindl

JG,

My next appointment with the VA is 10/29/2019 with the ENT (ear, nose, throat) group at the DeBakey VA hospital to attempt to ascertain the source for my recurring dizzy spells.

My next appointment with my primary care physician is next Feb, 2020.

My next appointment with my pulmonary care specialist for my COPD (Chronic Obstructive Pulmonary Disease) is also next year.

I will do an online request to see my primary at the Katy VA outpatient clinic, but I'm not sure if that can happen within 15 days, it is the VA, so nothing is for certain.

I will also attempt to get an appointment with my primary care private physician in Bellville.

I must admit that as an senior citizen and as an individual who has identified, in the onboarding process, as an individual with a disability and when factoring in the very problematic heart surgery and subsequent associated health issues, I am concerned about the way the institution and/or individuals within the institution, treat those identified as disabled, more specifically, myself.

If my work was lacking, maybe I could understand, but it isn't and I don't understand.

It does seem that personalities have drifted in to the equation, in my opinion.

I appreciate your assistance and efforts with my disability and during my recovery but, I must admit that it has been an extremely distasteful experience with other FEMA personnel.

I will endeavor to get the paperwork returned in a timely manner but I am concerned about the 15 day window.

Please advise.

---

Max J Meindl, PMP  
Program Delivery Manager | Houston TRO  
DHS | FEMA-Recovery Directorate  
Public Assistance Division  
FEMA/HQ  
202-374-9426  
[max.meindl@fema.dhs.gov](mailto:max.meindl@fema.dhs.gov)



# FEMA

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---

**From:** Gause, Jacqueline <jacqueline.gause@fema.dhs.gov>  
**Sent:** Tuesday, October 22, 2019 3:13 PM  
**To:** Meindl, Max <max.meindl@fema.dhs.gov>  
**Cc:** Wick, Timothy <Timothy.Wick@fema.dhs.gov>  
**Subject:** FMLA Recertification - M. Meindl

Good afternoon Max,

On May 1, 2019 you were initially approved for FMLA due to a serious/chronic health condition. Given that it has now been more than thirty (30) calendar days since your last medical update for your current FMLA condition, I am requesting that you provide me with an FMLA recertification as it relates to your current FMLA condition of record. The recertification is now necessary to ensure that the workload on your team can be planned and managed effectively while assisting you during your time of recovery. Therefore, I am requesting that you work with your physician to respond to all questions where appropriate especially those related to the questions identified below. These questions are not separate and apart from the recertification form but can be responded to within the context of the questions already provided on the form. (29 CFR 825.308(a), permits recertification every 30 days for chronic or permanent/long-term conditions.)

Purpose of this FMLA Recertification Update:

1. To validate if you are continuing to see the physician for the specific condition listed on your FMLA application dated and signed by your physician, on 4/11/2019.
2. Request that you provide an estimate of the duration of your condition & if you will be incapacitated for a single continuous period of time. (See questions #1 & #4).
3. Request that you specify what dates, if any, you will have planned appointments within the next 30 days. (See Question #5)
4. Request that your physician state whether or not you require care on an intermittent or reduced schedule basis, including any time for recovery. (See Question #6)
5. Request that your physician provide an estimate of when you will have flare-ups during your recovery period (if known) that will prevent you from performing your job functions. (See question #7).

Your health remains of paramount concern to me as well as our mission. My goal remains to work cooperatively with you and your physician in a manner which affords you the best opportunity to recover and return to full time employment status. However, failure to provide this requested FMLA Recertification information within fifteen (15) working days of receipt will result in the denial of any FMLA related leave until the information is provided.

If you experience difficulty providing this information within the specified period, please see me, or in my absence Patricia David, and provide a brief written statement documenting your hardship and your request for extension will be responded to within three (3) working days.

Regards,

*Jacqueline Gause, MSc*

Human Resources  
Federal Emergency Management Agency  
Department of Homeland Security  
Hurricane Harvey-DR4332-TX  
Texas Recovery Office  
Houston, TX  
Mobile: 202-322-6241



From: **Max** <femamax@gmail.com>  
To: **Max Meindl** <max.meindl@fema.dhs.gov>  
Subject: FMLA  
Date: 16.09.2020 14:16:36 (+02:00)  
Attachments: FMLA-09-16-2020-MEINDL.pdf (4 pages)

--  
Regards,

Max J. Meindl III

"Exuberance is easily corrected; dullness is incurable." Quintilian

"I don't make mistakes. I have unintentional improvisations." ~unknown

Texas  
832-293-3671

**Certification of Health Care Provider for  
Family Member's Serious Health Condition  
(Family and Medical Leave Act)**

**U.S. Department of Labor**  
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003  
Expires: 8/31/2021

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: DHS/FEMA, 500 C St SW, Washington, DC 20024, Jacqueline Gause, MSc  
Texas Recovery Office Houston, TX Mobile: 202-322-6241

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: Max J Meindl

First                    Middle                    Last

Name of family member for whom you will provide care: Rachel P Meindl

First                    Middle                    Last

Relationship of family member to you: Spouse

If family member is your son or daughter, date of birth: \_\_\_\_\_

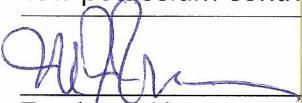
Describe care you will provide to your family member and estimate leave needed to provide care:

Currently in critical condition, 50% mortality rate, previously undetected diabetes, blood poisoning,

Sepsis is a life-threatening condition in which the body is fighting a severe infection that has spread via the bloodstream,

low potassium contributing to heart conditions.

03/11/2020

  
Employee Signature

Date

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: Gay C Christoph MD, 235 W Palm St # 102, Bellville, TX 77418

Type of practice / Medical specialty: Family Medicine

Telephone: (979) 865-8484 Fax: ( )

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: 10 Mar 20

Probable duration of condition: ~

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

No  Yes. If so, dates of admission: 10 Mar 20

Date(s) you treated the patient for condition: 10 Mar 20 to present

Was medication, other than over-the-counter medication, prescribed? No  Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? No  Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

No  Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? No  Yes. If so, expected delivery date: \_\_\_\_\_

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

Sepsis

DKA

**PART B: AMOUNT OF CARE NEEDED:** When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? No  Yes.

Estimate the beginning and ending dates for the period of incapacity: 10 Mar 20 - 24 Mar 20

During this time, will the patient need care? No  Yes.

Explain the care needed by the patient and why such care is medically necessary:

Pt. has high risk of Death

5. Will the patient require follow-up treatments, including any time for recovery? No  Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

initially 1-2 x/month

Explain the care needed by the patient, and why such care is medically necessary:

Severe DM

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? No  Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

8 hour(s) per day; 2 days per week from Mar 20 through Dec 20

Explain the care needed by the patient, and why such care is medically necessary:

Debility from Severe Illness

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? No Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: 2 times per 1 week(s)    month(s)

Duration: 4 hours or    day(s) per episode

Does the patient need care during these flare-ups? No Yes.

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

Monitoring for uncontrolled  
Diabetes

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

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Signature of Health Care Provider

Date

11 Mar 20

#### PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.

**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

From: **Meindl, Max** <max.meindl@fema.dhs.gov>  
To: **Max** <femamax@gmail.com>  
Subject: RA  
Date: 09.11.2021 13:51:27 (+01:00)  
Attachments: RELIGIOUS FROM WEB PAGE.docx (29 pages), RA-MEDICAL-FROM WEB SITE CLIP.docx (14 pages)

The screenshot shows the DHS ServiceNow OAST homepage. At the top, there's a navigation bar with links for 'OAST HOMEPAGE', 'MY TICKETS', 'MY APPROVALS', 'GET HELP', 'CREATE NEW REQUEST', and 'Tours'. A user profile for 'Meindl, Max' is visible on the right. Below the header, the page title is 'My Tickets'. A sub-header says 'My Tickets' and provides instructions: 'Search and review your requests and incidents. Select the dropdown on an item to preview information or click into it to review the details and current status.' A message indicates 'You have 2 open service requests'. Below this, there's a search bar labeled 'Search requests' with filters: 'Open' (checked), 'Closed', 'My Requests' (checked), and 'Requests for others'. Two service requests are listed:

- Reasonable Accommodation Request - RAR0023278**  
Requested For: Meindl, Max Opened: 12d ago State: Open
- Reasonable Accommodation Request - RAR0023261**  
Requested For: Meindl, Max Opened: 12d ago State: Open

A second section for 'incidents' shows '0 open incidents'.

This screenshot shows the 'Reasonable Accommodation Request Summary' page for RAR0023278. At the top, it says 'Your request (RAR0023278) is currently Open' and 'Your request was most recently worked on by DHS OAST - FEMA Reasonable Accommodation Admin'. Below this, there are two sections: 'Connect About Your Request' and 'Information About Your Request'.

- Connect About Your Request:** This section includes a message input field and a 'Submit' button. It also shows a list of attachments for the request:
  - RAR0023278: COVID-19 Vaccine Exemption (for RELIGIOUS reasons)
  - Meindl, Max 12d ago (RAR0023278 Created)
  - Meindl, Max 12d ago (RELIGIOUS EXEMPTION REQUEST.pdf 1.2 MB)
- Information About Your Request:** This section displays the request details:

Number	State	Created
RAR0023278	Open	12d ago
Updated		

With buttons for 'Additional Request Details' and 'Cancel Request'.

Max J Meindl, PMP  
Program Delivery Task Force Lead | DR-4611-LA Debris Task Force | Emergency Management Specialist  
Duty Station: 4611DR DR - Baton Rouge, Louisiana - JFO ROR | Region 6

Mobile: 202-374-9426  
[max.meindl@fema.dhs.gov](mailto:max.meindl@fema.dhs.gov)

Federal Emergency Management Agency  
[www.FEMA.gov](http://www.FEMA.gov)



# FEMA

**WARNING:** This email contains FOR OFFICIAL USE ONLY (FOUO) OR PRIVACY DATA.

It may contain information exempt from public release under the Freedom of Information Act (5 U.S.C. 552).

The information contained herein must be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO/PII information and is not to be released to the public or other personnel who do not have a valid “need-to-know” without prior approval of an authorized DHS official.



- 
- 
- 
- CREATE NEW REQUEST

- [Home](#)
- /
- [My Tickets](#)

- /
- RAR0023278

# DHS Request

## Reasonable Accommodation Request Summary

Your request (RAR0023278) is currently **Open**

Your request was most recently worked on by **DHS OAST - FEMA Reasonable Accommodation Admin**

### Connect About Your Request

Have a question? Use the chat box below to ask questions about your request

RAR0023278: COVID-19 Vaccine Exemption (for RELIGIOUS reasons)

- 
- 
- 

• MM

**Meindl, Max** 12d ago

RAR0023278 Created

• MM

**Meindl, Max** 12d ago

Journal type:

**RELIGIOUS EXEMPTION REQUEST.pdf**

1.2 MB

• MM

**Meindl, Max 14m ago**

Journal type:

**Pages from MEINDL REASONABLE ACCOMMODATION-EXEMPTION REQUEST-VACCINE MANDATE-10-25-2021-REV2.pdf**

2.9 MB

• MM

**Meindl, Max 13m ago**

Journal type: Additional comments

RA form

• MM

**Meindl, Max 13m ago**

Journal type: Additional comments

RA form

• MM

**Meindl, Max** 13m ago

Journal type: Additional comments

RA form

• MM

**Meindl, Max** 13m ago

Journal type: Additional comments

RA form



## Information About Your Request

### Number

RAR0023278

### State

Open

### Created

12d ago

### Updated

13m ago

## Additional Request Details

If you would like to edit your request, send a message describing your desired changes using the chat box to the left.

---

Hidden Name

Meindl, Max

Who is submitting this request?

Recipient of the request (Myself)

First Name

Max

Last Name

Meindl

Work Phone

202-374-9426

Email Address

max.meindl@fema.dhs.gov

Position Title

Emergency Management Specialist

Component

FEMA

What is the Employee Type of Person to be Accommodated?

Federal Employee

Pay Plan/Grade of Person to be Accommodated

GS 11/10

Series of Person to be Accommodated

0089

Choose the Employee Subtype

FEMA

What is your FEMA Employee Type?

CORE (Cadre on Call Employee)

Are you deployed?

Yes

Disaster Number

4611

Deployment Location

Baton Rouge (ROR)

What is your Official Duty Station?

Houston TX

Supervisor

Bergin, John

Supervisor's First Name

John

Supervisor's Last Name

Bergin

Supervisor's Email

john.bergin@fema.dhs.gov

Please select all reasonable accommodation items being requested

COVID-19 Vaccine Exemption (for RELIGIOUS reasons)

Please describe the nature of your objection to the COVID-19 vaccination requirement.

QUESTIONING THE ORTHODOXY OF SINCERELY HELD RELIGIOUS BELIEFS OR REQUIRING A CLERGY, PLACE OF WORSHIP, OR A THIRD PARTY TO AGREE WITH OR AFFIRM SUCH RELIGIOUS BELIEFS IS UNLAWFUL Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. §2000e-2(a) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin"); see also EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (same). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII's protections also extend nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. See EEOC, Questions and Answers: Religious Discrimination in the Workplace (June 7, 2008), ("Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs . . . . Religious beliefs include theistic beliefs, i.e. those that include a belief in God as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.' Although courts generally resolve doubts about particular beliefs in favor of finding that they are

religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns ‘ultimate ideas’ about ‘life, purpose, and death’). As the Supreme Court has recognized, employees’ “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection.” Thomas v. Review Bd. of Ind. Emp’t Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual’s sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep’t of Emp’t Sec., 489 U.S. 829, 834 (1989) (“Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization.” (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for “sincerely held religious beliefs,” “not just tenets of organized religion”). In fact, the law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some individuals may have sincerely held religious beliefs which differ from those sincerely held by the employees requesting accommodation is irrelevant to whether the employees’ sincerely held religious beliefs are entitled to protection under Title VII. Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: “The non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine.” N.D. Health, COVID-19 Vaccines & Fetal Cell Lines (Apr. 20, 2021), [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (emphasis added) (last visited Aug. 27, 2021). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which “is a retinal cell line that was isolated from a terminated fetus in 1985.” La. Dep’t of Public Health, You Have Questions, We Have Answers: COVID-19 Vaccine FAQ (Dec. 21, 2020), [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (emphasis added) (last visited Aug. 27, 2021). The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health’s publications again confirm that aborted fetal cell lines were used in the “proof of concept” phase of the development of their COVID-19 mRNA vaccines. See La. Dep’t of Public Health, *supra*. The North Dakota Department of Health likewise confirms: “Early in the development of mRNA vaccine technology, fetal cells were used for ‘proof of concept’ (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein.” N.D. Health, *supra* (emphasis added). Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, many employees’ sincerely held religious beliefs compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Thus, while there may be some faith leaders and other adherents whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their connection with aborted fetal cell lines, any employee is entitled to interpret the Scriptural command against murder differently, which many indisputably do. Many employees have sincerely held religious beliefs that God forms children in the womb and knows them prior to their birth, and that because of this, life is sacred from the moment of conception to natural death. See Psalm 139:13-14 (ESV) (“For you formed my inward parts; you knitted me together in my mother’s womb. I praise you, for I am fearfully and wonderfully made.”); Psalm 139:16 (ESV) (“Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them.”); Isaiah 44:2 (“Thus says the Lord who made you, who formed you from the womb”); Isaiah 44:24 (“Thus says the Lord, your Redeemer, who formed you from the womb: ‘I am the Lord, who made all things’”); Isaiah 49:1 (“The Lord called me from the womb, from the body of my mother he named my name”); Isaiah 49:5 (“And now the Lord says, he who formed me from the womb to be his servant.”); Jeremiah 1:5 (“Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations”). As the Supreme Court has recognized, employees’ “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection.” Thomas v. Review Bd. of Ind. Emp’t Sec. Div.,

450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Empl Sec., 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). The Emergency Use Authorization Statute Prohibits Mandating the Currently Available COVID-19 Vaccines: The United States Code provides: [S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in thiPsasgeec t2i6o nofa 6s3an "emergency use." 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that "individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product" (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> ("It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Pfizer-BioNTech, Fact Sheet for Recipients and Caregivers (June 25, 2021), <https://www.fda.gov/media/144414/download> ("It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Janssen, Fact Sheet for Recipients and Caregivers (July 8, 2021), <https://www.fda.gov/media/146305/download> ("It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)). I have a strong moral and sincere religious beliefs and objection to vaccines that were derived from aborted fetal cells. It is my sincerely held religious belief that, in being vaccinated with any of the currently available alleged COVID-19 vaccines, I would be cooperating with and complicit in abortion – the ending of an innocent human life – and that such would constitute a sin against God and a violation of His Commandments, for which I would be held morally accountable by God. For that reason, I am demanding a medical and a religious accommodation, under Title VII and any similar Texas and or Washington DC state (district) law(s), that will excuse me from having to receive a COVID-19 vaccine, and further request that no adverse employment action be taken against me on account of my religious beliefs. A. Pfizer and BioNTech – The Pfizer Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [3]. B. Moderna – The Moderna Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is cited by the vaccine researchers Kizzmekia S. Corbett, Darin K. Edwards, and Sarah R. Leist [4]. C. Johnson & Johnson – The J&J Vaccine has publicly admitted to using a cell line called PER.C6. This is published on the Janssen website [5]. This information is enumerated by the Lozier Institute [2]. D. Sputnik V – The Sputnik V Vaccine cites their manufacturers as using the abortion-derived cell line HEK-293 [6][7]. E. AstraZeneca – AstraZeneca was developed using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is also contained in documents permitting its emergency use in the United Kingdom [8]. F. Vaxart – Vaxart was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [9]. G. Altimmune – The Altimmune vaccine was produced and

developed with the abortion-derived cell line PER.C6. This information is recorded by Altimmune's own Clinical Trial Protocol [10]. This information is enumerated by the Lozier Institute [2]. H. COVAXX and United Biomedical – COVAXX was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [11]. I. Medicago – The Medicago Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [12]. J. Novavax – The Novavax Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at ScienceMag [13]. K. University of Pittsburgh "PittCoVacc" – PittCoVacc was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by EBioMedicine at the Lancet [14]. L. Walter Reed Army Institute – The Walter Reed Vaccine was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [15]. M. Sanofi Pasteur and Translate Bio – The Sanofi Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the vaccine researchers at NPJ Vaccines [16]. N. Inovio Pharmaceuticals – The Inovio Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at ScienceMag [17]. O. Arcturus Therapeutics – The Arcturus Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [18]. P. Imperial College London – The Imperial College Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [19]. Q. Providence Therapeutics – The Providence Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [20]. R. CoronaVac – CoronaVac was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at ScienceMag [21]. S. CanSino Biologics – The CanSino Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at BioSpace [22]. T. ImmunityBio and NantKwest – The ImmunityBio Vaccine was developed, produced, and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [23]. U. Institut Pasteur and Themis and Merck – The Institut Pasteur Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Proceedings of the National Academy of Sciences of the United States of America [24]. V. Rega Institute, KU Leuven – The Rega Vaccine protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Global Virus Network [25]. W. Anhui Zhifei – The Anhui Zhifei Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cell Press Journal [26]. I Max J Meindl do hereby stipulate: "I understand the above is your position. I am signing this document without waiver of y legal right to seek religious exemption and accommodation from any requirement that conflicts with my sincerely held religious beliefs, and without waiver of the right to seek legal redress from any wrongful denial of such exemption or accommodation."

Would complying with the COVID-19 vaccination requirement substantially burden your religious exercise or conflict with your sincerely held religious beliefs, practices, or observances? If so, please explain how.

QUESTIONING THE ORTHODOXY OF SINCELY HELD RELIGIOUS BELIEFS OR REQUIRING A CLERGY, PLACE OF WORSHIP, OR A THIRD PARTY TO AGREE WITH OR AFFIRM SUCH RELIGIOUS BELIEFS IS UNLAWFUL Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. §2000e-2(a) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such

individual's race, color, religion, sex, or national origin"); see also EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (same). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII's protections also extend nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. See EEOC, Questions and Answers: Religious Discrimination in the Workplace (June 7, 2008), ("Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs .... Religious beliefs include theistic beliefs, i.e. those that include a belief in God as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.' Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns 'ultimate ideas' about 'life, purpose, and death'). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Emp't Sec., 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). In fact, the law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some individuals may have sincerely held religious beliefs which differ from those sincerely held by the employees requesting accommodation is irrelevant to whether the employees' sincerely held religious beliefs are entitled to protection under Title VII. Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: "The non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine." N.D. Health, COVID-19 Vaccines & Fetal Cell Lines (Apr. 20, 2021), [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (emphasis added) (last visited Aug. 27, 2021). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which "is a retinal cell line that was isolated from a terminated fetus in 1985." La. Dep't of Public Health, You Have Questions, We Have Answers: COVID-19 Vaccine FAQ (Dec. 21, 2020), [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (emphasis added) (last visited Aug. 27, 2021). The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health's publications again confirm that aborted fetal cell lines were used in the "proof of concept" phase of the development of their COVID-19 mRNA vaccines. See La. Dep't of Public Health, *supra*. The North Dakota Department of Health likewise confirms: "Early in the development of mRNA vaccine technology, fetal cells were used for 'proof of concept' (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein." N.D. Health, *supra* (emphasis added). Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, many employees' sincerely held religious beliefs compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Thus, while there may be some faith leaders and other adherents whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their connection with aborted fetal cell lines, any employee is entitled to interpret the Scriptural command against murder differently, which many indisputably do. Many employees have sincerely held religious beliefs that God forms children in the womb and knows them prior to their birth, and that because of this, life is sacred from the moment of conception to natural death. See Psalm 139:13-14 (ESV) ("For you formed my inward parts; you knitted me together in my mother's womb. I praise you,

for I am fearfully and wonderfully made."); Psalm 139:16 (ESV) ("Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them."); Isaiah 44:2 ("Thus says the Lord who made you, who formed you from the womb"); Isaiah 44:24 ("Thus says the Lord, your Redeemer, who formed you from the womb: 'I am the Lord, who made all things'"); Isaiah 49:1 ("The Lord called me from the womb, from the body of my mother he named my name"); Isaiah 49:5 ("And now the Lord says, he who formed me from the womb to be his servant,"); Jeremiah 1:5 ("Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Empt' Sec., 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion").

The Emergency Use Authorization Statute Prohibits Mandating the Currently Available COVID-19 Vaccines: The United States Code provides: [S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in thiPsasgeec t2i6o nofa 6s3an "emergency use." 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that "individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product" (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> ("It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Pfizer-BioNTech, Fact Sheet for Recipients and Caregivers (June 25, 2021), <https://www.fda.gov/media/144414/download> ("It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Janssen, Fact Sheet for Recipients and Caregivers (July 8, 2021), <https://www.fda.gov/media/146305/download> ("It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)). I have a strong moral and sincere religious beliefs and objection to vaccines that were derived from aborted fetal cells. It is my sincerely held religious belief that, in being vaccinated with any of the currently available alleged COVID-19 vaccines, I would be cooperating with and complicit in abortion – the ending of an innocent human life –and that such would constitute a sin against God and a violation of His Commandments, for which I would be held morally accountable by God. For that reason, I am demanding a medical and a religious accommodation, under Title VII and any similar Texas and or Washington DC state (district) law(s), that will excuse me from having to receive a COVID-19 vaccine, and further request that no adverse employment action be taken against me on account of my religious beliefs. A. Pfizer and BioNTech – The Pfizer Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [3]. B. Moderna – The Moderna Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the

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This information is enumerated by the Lozier Institute [2]. This information is recorded by the Global Virus Network [25]. W. Anhui Zhifei – The Anhui Zhifei Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cell Press Journal [26]. I Max J Meindl do hereby stipulate: "I understand the above is your position. I am signing this document without waiver of y legal right to seek religious exemption and accommodation from any requirement that conflicts with my sincerely held religious beliefs, and without waiver of the right to seek legal redress from any wrongful denial of such exemption or accommodation."

How long have you held the religious belief underlying your objection?

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I praise you, for I am fearfully and wonderfully made.”); Psalm 139:16 (ESV) (“Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them.”); Isaiah 44:2 (“Thus says the Lord who made you, who formed you from the womb”); Isaiah 44:24 (“Thus says the Lord, your Redeemer, who formed you from the womb: ‘I am the Lord, who made all things’”); Isaiah 49:1 (“The Lord called me from the womb, from the body of my mother he named my name”); Isaiah 49:5 (“And now the Lord says, he who formed me from the womb to be his servant,”); Jeremiah 1:5 (“Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations”). As the Supreme Court has recognized, employees’ “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection.” Thomas v. Review Bd. of Ind. Emp’t Sec. 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See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that “individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product” (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> (“It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. 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HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Global Virus Network [25]. W. Anhui Zhifei – The Anhui Zhifei Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cell Press Journal [26]. I Max J Meindl do hereby stipulate: "I understand the above is your position. I am signing this document without waiver of y legal right to seek religious exemption and accommodation from any requirement that conflicts with my sincerely held religious beliefs, and without waiver of the right to seek legal redress from any wrongful denial of such exemption or accommodation."

Please describe whether, as an adult, you have received any vaccines against any other diseases(such as a flu vaccine or a tetanus vaccine) and, if so, what vaccine you most recently received and when, to the best of your recollection.

1969 while in the US Navy, defending your right to be free. QUESTIONING THE ORTHODOXY OF SINCELY HELD RELIGIOUS BELIEFS OR REQUIRING A CLERGY, PLACE OF WORSHIP, OR A THIRD PARTY TO AGREE WITH OR AFFIRM SUCH RELIGIOUS BELIEFS IS UNLAWFUL Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. §2000e-2(a) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin"); see also EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (same). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII's protections also extend nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. See EEOC, Questions and Answers: Religious Discrimination in the Workplace (June 7, 2008), ("Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs . . . Religious beliefs include theistic beliefs, i.e. those that include a belief in God as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.' Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns 'ultimate ideas' about 'life, purpose, and death'"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Empt Sec., 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). In fact, the law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some individuals may have sincerely held religious beliefs which differ from those sincerely held by the employees requesting accommodation is irrelevant to whether the employees' sincerely held religious beliefs are entitled to protection under Title VII. Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: "The non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine." N.D. Health, COVID-19 Vaccines & Fetal Cell Lines (Apr. 20, 2021), [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (emphasis added) (last visited Aug. 27, 2021). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which "is a retinal cell line that was isolated from a terminated fetus in 1985." La. Dep't of Public Health, You Have

Questions, We Have Answers: COVID-19 Vaccine FAQ (Dec. 21, 2020), [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (emphasis added) (last visited Aug. 27, 2021). The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health's publications again confirm that aborted fetal cell lines were used in the "proof of concept" phase of the development of their COVID-19 mRNA vaccines. See La. Dep't of Public Health, *supra*. The North Dakota Department of Health likewise confirms: "Early in the development of mRNA vaccine technology, fetal cells were used for 'proof of concept' (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein." N.D. Health, *supra* (emphasis added). Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, many employees' sincerely held religious beliefs compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Thus, while there may be some faith leaders and other adherents whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their connection with aborted fetal cell lines, any employee is entitled to interpret the Scriptural command against murder differently, which many indisputably do. Many employees have sincerely held religious beliefs that God forms children in the womb and knows them prior to their birth, and that because of this, life is sacred from the moment of conception to natural death. See Psalm 139:13-14 (ESV) ("For you formed my inward parts; you knitted me together in my mother's womb. I praise you, for I am fearfully and wonderfully made."); Psalm 139:16 (ESV) ("Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them."); Isaiah 44:2 ("Thus says the Lord who made you, who formed you from the womb"); Isaiah 44:24 ("Thus says the Lord, your Redeemer, who formed you from the womb: 'I am the Lord, who made all things'"); Isaiah 49:1 ("The Lord called me from the womb, from the body of my mother he named my name"); Isaiah 49:5 ("And now the Lord says, he who formed me from the womb to be his servant,"); Jeremiah 1:5 ("Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981); see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See *Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also *Office of Foreign Assets Control v. Voices in the Wilderness*, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion").

**Currently Available COVID-19 Vaccines:** The United States Code provides: [S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in thiPsasgeec t2i6o nofa 6s3an "emergency use." 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that "individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product" (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> ("It is your choice to receive or not to receive the Moderna

COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Pfizer-BioNTech, Fact Sheet for Recipients and Caregivers (June 25, 2021), <https://www.fda.gov/media/144414/download> ("It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Janssen, Fact Sheet for Recipients and Caregivers (July 8, 2021), <https://www.fda.gov/media/146305/download> ("It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)). I have a strong moral and sincere religious beliefs and objection to vaccines that were derived from aborted fetal cells. It is my sincerely held religious belief that, in being vaccinated with any of the currently available alleged COVID-19 vaccines, I would be cooperating with and complicit in abortion – the ending of an innocent human life –and that such would constitute a sin against God and a violation of His Commandments, for which I would be held morally accountable by God. For that reason, I am demanding a medical and a religious accommodation, under Title VII and any similar Texas and or Washington DC state (district) law(s), that will excuse me from having to receive a COVID-19 vaccine, and further request that no adverse employment action be taken against me on account of my religious beliefs. A. Pfizer and BioNTech – The Pfizer Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [3]. B. Moderna – The Moderna Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is cited by the vaccine researchers Kizzmekia S. Corbett, Darin K. Edwards, and Sarah R. Leist [4]. C. Johnson & Johnson – The J&J Vaccine has publicly admitted to using a cell line called PER.C6. This is published on the Janssen website [5]. This information is enumerated by the Lozier Institute [2]. D. Sputnik V – The Sputnik V Vaccine cites their manufacturers as using the abortion-derived cell line HEK-293 [6][7]. E. AstraZeneca – AstraZeneca was developed using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is also contained in documents permitting its emergency use in the United Kingdom [8]. F. Vaxart – Vaxart was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [9]. G. Altimmune – The Altimmune vaccine was produced and developed with the abortion-derived cell line PER.C6. This information is recorded by Altimmune's own Clinical Trial Protocol [10]. This information is enumerated by the Lozier Institute [2]. H. COVAXX and United Biomedical – COVAXX was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [11]. I. Medicago – The Medicago Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [12]. J. Novavax – The Novavax Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researches at ScienceMag [13]. K. University of Pittsburgh "PittCoVacc" – PittCoVacc was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by EBioMedicine at the Lancet [14]. L. Walter Reed Army Institute – The Walter Reed Vaccine was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [15]. M. Sanofi Pasteur and Translate Bio – The Sanofi Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the vaccine researchers at NPJ Vaccines [16]. N. Inovio Pharmaceuticals – The Inovio Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researches at ScienceMag [17]. O. Arcturus Therapeutics – The Arcturus Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [18]. P. Imperial College London – The Imperial College Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [19]. Q. Providence Therapeutics – The Providence Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [20]. R. CoronaVac – CoronaVac was protein tested using the abortion-derived cell

line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researches at ScienceMag [21]. S. CanSino Biologics – The CanSino Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researches at BioSpace [22]. T. ImmunityBio and NantKwest – The ImmunityBio Vaccine was developed, produced, and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [23]. U. Institut Pasteur and Themis and Merck – The Institut Pasteur Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Proceedings of the National Academy of Sciences of the United States of America [24]. V. Rega Institute, KU Leuven – The Rega Vaccine protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Global Virus Network [25]. W. Anhui Zhifei – The Anhui Zhifei Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cell Press Journal [26]. I Max J Meindl do hereby stipulate: "I understand the above is your position. I am signing this document without waiver of y legal right to seek religious exemption and accommodation from any requirement that conflicts with my sincerely held religious beliefs, and without waiver of the right to seek legal redress from any wrongful denial of such exemption or accommodation."

If you do not have a religious objection to the use of all vaccines, please explain why your objection is limited to particular vaccines.

QUESTIONING THE ORTHODOXY OF SINCERELY HELD RELIGIOUS BELIEFS OR REQUIRING A CLERGY, PLACE OF WORSHIP, OR A THIRD PARTY TO AGREE WITH OR AFFIRM SUCH RELIGIOUS BELIEFS IS UNLAWFUL Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. §2000e-2(a) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin"); see also EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (same). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII's protections also extend nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. See EEOC, Questions and Answers: Religious Discrimination in the Workplace (June 7, 2008), ("Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs . . . . Religious beliefs include theistic beliefs, i.e. those that include a belief in God as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.' Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns 'ultimate ideas' about 'life, purpose, and death'"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Emp't Sec., 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). In fact, the law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some individuals may have sincerely held religious beliefs which differ from those sincerely held by the employees requesting

accommodation is irrelevant to whether the employees' sincerely held religious beliefs are entitled to protection under Title VII. Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: "The non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine." N.D. Health, COVID-19 Vaccines & Fetal Cell Lines (Apr. 20, 2021), [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (emphasis added) (last visited Aug. 27, 2021). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which "is a retinal cell line that was isolated from a terminated fetus in 1985." La. Dep't of Public Health, You Have Questions, We Have Answers: COVID-19 Vaccine FAQ (Dec. 21, 2020), [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (emphasis added) (last visited Aug. 27, 2021). The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health's publications again confirm that aborted fetal cell lines were used in the "proof of concept" phase of the development of their COVID-19 mRNA vaccines. See La. Dep't of Public Health, *supra*. 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I praise you, for I am fearfully and wonderfully made."); Psalm 139:16 (ESV) ("Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them."); Isaiah 44:2 ("Thus says the Lord who made you, who formed you from the womb"); Isaiah 44:24 ("Thus says the Lord, your Redeemer, who formed you from the womb: 'I am the Lord, who made all things'"); Isaiah 49:1 ("The Lord called me from the womb, from the body of my mother he named my name"); Isaiah 49:5 ("And now the Lord says, he who formed me from the womb to be his servant,"); Jeremiah 1:5 ("Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981); see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See *Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also *Office of Foreign Assets Control v. Voices in the Wilderness*, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). The Emergency Use Authorization Statute Prohibits Mandating the Currently Available COVID-19 Vaccines: The United States Code provides: [S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in thiPsasgeec t2i6o nofa 6s3an "emergency use." 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA

product may be administered be given the option to accept or refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that “individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product” (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> (“It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. 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If there are any other medicines or products that you do not use because of the religious belief underlying your objection, please identify them.

QUESTIONING THE ORTHODOXY OF SINCERELY HELD RELIGIOUS BELIEFS OR REQUIRING A CLERGY, PLACE OF WORSHIP, OR A THIRD PARTY TO AGREE WITH OR AFFIRM SUCH RELIGIOUS BELIEFS IS UNLAWFUL Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. §2000e-2(a) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin"); see also EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (same). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII's protections also extend nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. See EEOC, Questions and Answers: Religious Discrimination in the Workplace (June 7, 2008), ("Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs . . . . Religious beliefs include theistic beliefs, i.e. those that include a belief in God as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.' Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns 'ultimate ideas' about 'life, purpose, and death'"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Emp't Sec., 489 U.S.

829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also *Office of Foreign Assets Control v. Voices in the Wilderness*, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). In fact, the law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some individuals may have sincerely held religious beliefs which differ from those sincerely held by the employees requesting accommodation is irrelevant to whether the employees' sincerely held religious beliefs are entitled to protection under Title VII. Department of Health, in its handout literature for those considering one of the COVID-19 vaccines, notes the following: "The non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine." N.D. Health, COVID-19 Vaccines & Fetal Cell Lines (Apr. 20, 2021), [https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19\\_Vaccine\\_Fetal\\_Cell\\_Handout.pdf](https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf) (emphasis added) (last visited Aug. 27, 2021). The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine used the PER.C6 fetal cell line, which "is a retinal cell line that was isolated from a terminated fetus in 1985." La. Dep't of Public Health, You Have Questions, We Have Answers: COVID-19 Vaccine FAQ (Dec. 21, 2020), [https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You\\_Have\\_Qs\\_COVID-19\\_Vaccine\\_FAQ.pdf](https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf) (emphasis added) (last visited Aug. 27, 2021). The same is true of the Moderna and Pfizer-BioNTech mRNA vaccines. The Louisiana Department of Health's publications again confirm that aborted fetal cell lines were used in the "proof of concept" phase of the development of their COVID-19 mRNA vaccines. See La. Dep't of Public Health, *supra*. The North Dakota Department of Health likewise confirms: "Early in the development of mRNA vaccine technology, fetal cells were used for 'proof of concept' (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein." N.D. Health, *supra* (emphasis added). Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, many employees' sincerely held religious beliefs compel them to abstain from accepting or injecting any of these products into their bodies, regardless of the perceived benefits or rationales. Thus, while there may be some faith leaders and other adherents whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their connection with aborted fetal cell lines, any employee is entitled to interpret the Scriptural command against murder differently, which many indisputably do. Many employees have sincerely held religious beliefs that God forms children in the womb and knows them prior to their birth, and that because of this, life is sacred from the moment of conception to natural death. See Psalm 139:13-14 (ESV) ("For you formed my inward parts; you knitted me together in my mother's womb. I praise you, for I am fearfully and wonderfully made."); Psalm 139:16 (ESV) ("Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them."); Isaiah 44:2 ("Thus says the Lord who made you, who formed you from the womb"); Isaiah 44:24 ("Thus says the Lord, your Redeemer, who formed you from the womb: 'I am the Lord, who made all things'"); Isaiah 49:1 ("The Lord called me from the womb, from the body of my mother he named my name"); Isaiah 49:5 ("And now the Lord says, he who formed me from the womb to be his servant,"); Jeremiah 1:5 ("Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit [legal] protection." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981); see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See *Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular

religious organization." (emphasis added)); see also *Office of Foreign Assets Control v. Voices in the Wilderness*, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion"). The Emergency Use Authorization Statute Prohibits Mandating the Currently Available COVID-19 Vaccines: The United States Code provides: [S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in thiPsasgeec t2i6o nofa 6s3an "emergency use." 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that "individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product" (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> ("It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Pfizer-BioNTech, Fact Sheet for Recipients and Caregivers (June 25, 2021), <https://www.fda.gov/media/144414/download> ("It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Janssen, Fact Sheet for Recipients and Caregivers (July 8, 2021), <https://www.fda.gov/media/146305/download> ("It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)). I have a strong moral and sincere religious beliefs and objection to vaccines that were derived from aborted fetal cells. It is my sincerely held religious belief that, in being vaccinated with any of the currently available alleged COVID-19 vaccines, I would be cooperating with and complicit in abortion – the ending of an innocent human life –and that such would constitute a sin against God and a violation of His Commandments, for which I would be held morally accountable by God. For that reason, I am demanding a medical and a religious accommodation, under Title VII and any similar Texas and or Washington DC state (district) law(s), that will excuse me from having to receive a COVID-19 vaccine, and further request that no adverse employment action be taken against me on account of my religious beliefs. A. Pfizer and BioNTech – The Pfizer Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. 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Please provide any additional information that you think may be helpful in reviewing your request.

See attachments QUESTIONING THE ORTHODOXY OF SINCERELY HELD RELIGIOUS BELIEFS OR REQUIRING A CLERGY, PLACE OF WORSHIP, OR A THIRD PARTY TO AGREE WITH OR AFFIRM SUCH RELIGIOUS BELIEFS IS UNLAWFUL Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against its employees on the basis of their sincerely held religious beliefs. See 42 U.S.C. §2000e-2(a) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin"); see also EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015) (same). Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). Moreover, as the EEOC has made clear, Title VII's protections also extend nonreligious beliefs if related to morality, ultimate ideas about life, purpose, and death. See EEOC, Questions and Answers: Religious Discrimination in the Workplace (June 7, 2008), ("Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs . . . Religious beliefs include theistic beliefs, i.e. those that include a belief in God as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the

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I praise you, for I am fearfully and wonderfully made."); Psalm 139:16 (ESV) ("Your eyes saw my unformed substance; in your book were written, every one of them, the days that were formed for me, when as yet there was none of them."); Isaiah 44:2 ("Thus says the Lord who made you, who formed you from the womb"); Isaiah 44:24 ("Thus says the Lord, your Redeemer, who formed you from the womb: 'I am the Lord, who made all things'"); Isaiah 49:1 ("The Lord called me from the womb, from the body of my mother he named my name"); Isaiah 49:5 ("And now the Lord says, he who formed me from the womb to be his servant,"); Jeremiah 1:5 ("Before I formed you in the womb I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations"). As the Supreme Court has recognized, employees' "religious beliefs need not be acceptable, logical, consistent,

or comprehensible to others in order to merit [legal] protection." Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981); see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual's sincerely held religious beliefs, it is not a necessary precondition. See Frazee v. Ill. Dep't of Empt' Sec., 489 U.S. 829, 834 (1989) ("Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization." (emphasis added)); see also Office of Foreign Assets Control v. Voices in the Wilderness, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for "sincerely held religious beliefs," "not just tenets of organized religion").

The Emergency Use Authorization Statute Prohibits Mandating the Currently Available COVID-19 Vaccines: The United States Code provides: [S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in thiPsasgeec t2i6o nofa 6s3an "emergency use." 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute]. As an essential part of the explicit statutory conditions for EUA, the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that "individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product" (emphasis added)). The only currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are only authorized for use under the EUA Statute and have no general approval under federal law. Thus, the administration of such vaccines cannot be mandatory under the plain text of the EUA Statute. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals cannot be compelled to accept or receive the vaccine. See Moderna, Fact Sheet for Recipients and Caregivers (June 24, 2021), <https://www.fda.gov/media/144638/download> ("It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Pfizer-BioNTech, Fact Sheet for Recipients and Caregivers (June 25, 2021), <https://www.fda.gov/media/144414/download> ("It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)); Janssen, Fact Sheet for Recipients and Caregivers (July 8, 2021), <https://www.fda.gov/media/146305/download> ("It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care." (emphasis added)). I have a strong moral and sincere religious beliefs and objection to vaccines that were derived from aborted fetal cells. It is my sincerely held religious belief that, in being vaccinated with any of the currently available alleged COVID-19 vaccines, I would be cooperating with and complicit in abortion – the ending of an innocent human life –and that such would constitute a sin against God and a violation of His Commandments, for which I would be held morally accountable by God. For that reason, I am demanding a medical and a religious accommodation, under Title VII and any similar Texas and or Washington DC state (district) law(s), that will excuse me from having to receive a COVID-19 vaccine, and further request that no adverse employment action be taken against me on account of my religious beliefs. A. Pfizer and BioNTech – The Pfizer Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [3]. B. Moderna – The Moderna Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is cited by the vaccine researchers Kizzmekia S. Corbett, Darin K. Edwards, and Sarah R. Leist [4]. C. Johnson & Johnson – The J&J Vaccine has publicly admitted to using a cell line called PER.C6. This is published on the Janssen website [5]. This information is enumerated by the Lozier Institute [2]. D. Sputnik V – The Sputnik V Vaccine cites their manufacturers as using the abortion-derived cell line HEK-293 [6][7]. E. AstraZeneca – AstraZeneca was developed using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is also contained in documents permitting its emergency use in the United Kingdom [8]. F. Vaxart – Vaxart was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is

recorded by the Cold Spring Harbor Laboratory [9]. G. Altimmune – The Altimmune vaccine was produced and developed with the abortion-derived cell line PER.C6. This information is recorded by Altimmune's own Clinical Trial Protocol [10]. This information is enumerated by the Lozier Institute [2]. H. COVAXX and United Biomedical – COVAXX was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [11]. I. Medicago – The Medicago Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [12]. J. Novavax – The Novavax Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at ScienceMag [13]. K. University of Pittsburgh "PittCoVacc" – PittCoVacc was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by EBioMedicine at the Lancet [14]. L. Walter Reed Army Institute – The Walter Reed Vaccine was produced with the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [15]. M. Sanofi Pasteur and Translate Bio – The Sanofi Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the vaccine researchers at NPJ Vaccines [16]. N. Inovio Pharmaceuticals – The Inovio Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at ScienceMag [17]. O. Arcturus Therapeutics – The Arcturus Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [18]. P. Imperial College London – The Imperial College Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [19]. Q. Providence Therapeutics – The Providence Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [20]. R. CoronaVac – CoronaVac was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at ScienceMag [21]. S. CanSino Biologics – The CanSino Vaccine was protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by researchers at BioSpace [22]. T. ImmunityBio and NantKwest – The ImmunityBio Vaccine was developed, produced, and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cold Spring Harbor Laboratory [23]. U. Institut Pasteur and Themis and Merck – The Institut Pasteur Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Proceedings of the National Academy of Sciences of the United States of America [24]. V. Rega Institute, KU Leuven – The Rega Vaccine protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Global Virus Network [25]. W. Anhui Zhifei – The Anhui Zhifei Vaccine was developed and protein tested using the abortion-derived cell line HEK-293. This information is enumerated by the Lozier Institute [2]. This information is recorded by the Cell Press Journal [26]. I Max J Meindl do hereby stipulate: "I understand the above is your position. I am signing this document without waiver of y legal right to seek religious exemption and accommodation from any requirement that conflicts with my sincerely held religious beliefs, and without waiver of the right to seek legal redress from any wrongful denial of such exemption or accommodation."

Please describe your job duties.

Program Delivery Manager Task Force Lead, remote/telework for over 20+ months, coordinating/mentoring remote/teleworking employees assigned. delivering services to assist applicants in their recovery.

I declare to the best of my knowledge and ability that the foregoing is true and correct.

true

Do you work in a SCIF?

No

I have read the Privacy Act Statement

true

[Cancel Request](#)

---

## Attachments

Upload attachments

- [Pages from MEINDL REASONABLE ACCOMMODATION-EXEMPTION REQUEST-VACCINE MANDATE-10-25-2021-REV2.pdf \(2.9 MB\)](#)

14m ago

- [RELIGIOUS EXEMPTION REQUEST.pdf \(1.2 MB\)](#)

12d ago



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  - RAR0023261

# DHS Request

## Reasonable Accommodation Request Summary

Your request (RAR0023261) is currently **Open**

Your request was most recently worked on by **DHS OAST - FEMA Reasonable Accommodation Admin**

### Connect About Your Request

Have a question? Use the chat box below to ask questions about your request

RAR0023261: COVID-19 Vaccine Exemption (for MEDICAL reasons)

- 
- 
- 

• MM

Meindl, Max 12d ago

RAR0023261 Created

• MM

**Meindl, Max** 12d ago

Journal type:

[MEINDL-SUBMIT-FINAL MEDICAL EXEMPTION SUBMITTAL-V5A-10-28-](#)

[2021.pdf](#)

5.5 MB

• MM

**Meindl, Max** 2m ago

Journal type:

[RA FORM- MEINDL REASONABLE ACCOMMODATION-EXEMPTION](#)

[REQUEST-VACCINE MANDATE-10-25-2021-REV2-2.pdf](#)

152.9 KB



Submit RA FORM- MEINDL REASONABLE ACCOMMODATION-EXEMPTION  
REQUEST-VACCINE MANDATE-10-25-2021-REV2-2.pdf Attached

## Information About Your Request

Number

RAR0023261

State

Open

Created

12d ago

Updated

2m ago

## Additional Request Details

If you would like to edit your request, send a message describing your desired changes using the chat box to the left.

---

Hidden Name

Meindl, Max

Who is submitting this request?

Recipient of the request (Myself)

First Name

Max

Last Name

Meindl

Work Phone

202-374-9426

Email Address

max.meindl@fema.dhs.gov

Position Title

Emergency Management Specialist

Component

FEMA

What is the Employee Type of Person to be Accommodated?

Federal Employee

Pay Plan/Grade of Person to be Accommodated

GS 11/10

Series of Person to be Accommodated

0089

Choose the Employee Subtype

FEMA

What is your FEMA Employee Type?

CORE (Cadre on Call Employee)

Are you deployed?

Yes

Disaster Number

4611

Deployment Location

Baton Rouge (ROR)

What is your Official Duty Station?

Houston TX

Supervisor

Bergin, John

Supervisor's First Name

John

Supervisor's Last Name

Bergin

Supervisor's Email

john.bergin@fema.dhs.gov

Please select all reasonable accommodation items being requested

COVID-19 Vaccine Exemption (for MEDICAL reasons)

What is the expected duration of your medical condition?

Long Term

Please describe your job duties.

Remote/telework program delivery task force lead, coordinating and mentoring assigned program delivery managers also working remotely, assisting applicants with their recovery efforts.

I declare to the best of my knowledge and ability that the foregoing is true and correct.

false

Briefly describe your disability/medical condition.

Disability review regarding Mr. Max Meindl who is a 70-year-old male with CAD, HTN, HLD and severe hypotension following the cardiac surgery...of 04/2019\_. He also has had proximal LAD with hematemesis. He has a history of exposure to paint, chemicals and asbestos with additional complications including dizziness since the surgery and wheezing. He has ongoing mild cardiac reduction in diffusion capacity. Additionally he has allergies that include contrast media, amlodipine and lisinopril. Mr. Meindl presently carries a 100% total body disability impairment rating as per his prior evaluations and surgeries. Current Condition: Shortness of breath, hypertensive urgency, other forms of dyspnea, unilateral primary osteoarthritis, right knee, high blood pressure, hypertensive heart disease, lung disorders, supraventricular rapid heart rate, chest pain, angina, abnormal electrocardiogram (ECG), (EKG), atherosclerotic heart disease of native coronary artery causing unspecific angina pectoris. Additionally, he has abnormal results of cardiovascular functional studies. Mr. Meindl's current medical condition and medical history is consistent with Congestive Heart failure. Given Mr. Meindl's Cardiac history of progressive heart disease together with known allergic reactions he therefore should not take any substance internally or intravenously that could cause anaphylaxis shock or could be additionally injurious to his already compromised cardiac function. PEG's have a high correlation between allergies and anaphylaxis shock. This is further complicated in that due to the vaccines spike protein production that is engineered into the user's genome, each such recipient of the Covid-19 Vaccines can produce micro clots in their cardiovascular system, which considering Mr. Meindl's cardiac condition, poses a higher risk of complications and injury.

Briefly describe the specific accommodation requested

Permanent exemption from any vaccine mandate

Please explain how your disability or medical condition prevents you from receiving the COVID-19 vaccine, addressing each type available (Moderna, Johnson & Johnson, and Pfizer).

Due to previous cardiac surgery, hypertensive heart disease causing ongoing cardiac reduction and previously known allergic reactions with a history of exposure to contrast media, amlodipine and lisinopril that there is a high degree of probability that he would be allergic to polyethylene glycol (PEG) and its components as part of the Covid -19 vaccine. Additionally, there is ongoing data that suggests that Covid- 19 Vaccines can damage the cardiovascular system, which is irreparable and irrevocable. Mr. Meindl's current medical condition and medical history is consistent with Congestive Heart failure. Given Mr. Meindl's Cardiac history of progressive heart disease together with known allergic reactions he therefore should not take any substance internally or intravenously that could cause anaphylaxis shock or could be additionally injurious to his already compromised cardiac function. PEG's have a high correlation between allergies and anaphylaxis shock. This is further complicated in that due to the vaccines spike protein production that is engineered into the user's genome, each such recipient of the Covid-19 Vaccines can produce micro clots in their cardiovascular system, which considering Mr. Meindl's cardiac condition, poses a higher risk of complications and injury. Additionally, according to the Covid-19 mRNA Vaccine BNT162b2 Manufacturers package leaflet, revised on 09/09/2021, "Covid-19 mRNA Vaccine should not be given if you are allergic to the active substance or any of the other ingredients of this medicine" stating that inflammation of the heart (myocarditis or pericarditis) have been reported following vaccination. This would certainly apply to Mr. Meindl. Therefore, Mr. Meindl is ineligible for any mRNA or Adenovirus Covid 19 Vaccine. 2.4. Four Immunological Problems with COVID-19 Vaccines. The Emergency Use experimental gene therapy shots, colloquially and collectively called "Covid Vaccines," various parties are requiring you to receive are, in fact, designed to alter, impair and abrogate "normal cell growth" by virtue of the genetic modifications made to your body that cause the production of Spike proteins (sometimes "S-cells");1 and as such may not be administered without express consent, whether the injectables or drugs are

approved by the FDA or not. Broadly, the Act describes rights of disabled persons (the "Disabled") and obligations of persons (legal and natural) interacting with the Disabled under Federal law, which is often further clarified under various States' laws. One such right of the Disabled (such as yourself), provides for certain medical privacy protections that may be additionally regulated in companion statutes such as The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The HIPPA statute, inter alia, protects your right for non-disclose of the nature and extent of your medical issues and disabilities to third parties. Once the ADA protections and rights are asserted, all persons, including third-parties and entities conceived or covered by the Act must provide you with "reasonable accommodation" under Section under Sec. 12111 (9) & (10) ibid. The covered entities include effectively all enterprises, schools or offices open to the public or where sufficient elements of interstate commerce are present. This includes all offices of local, state or federal governmental bodies, including but not limited to: detention facilities; government funded health care facilities; regulatory offices open to the public; Law Enforcement facilities; and legislative areas where the public would reasonably be anticipated to occasion or occupy. Likewise, private enterprises such as hospitals, hotels, restaurants, shops and airlines must provide such Reasonable Accommodation to you and your circumstances as a "disabled person" under the Act. In particular, you have suggested the mask mandates cause you medical hardship from the reduced access to and flow of oxygen available to you. Such accommodation certainly includes your ability to breathe freely without impairment, which could or would be caused by mandatory mask or filter apparatus wearing, as mandated by private businesses or public offices that you have occasion to visit. Such accommodations are recognized by the Act and are referred to as "Public Accommodations" under Title III of the Act. Failure to provide such accommodation may give rise, inter alia, to significant penalties (see: Title III supra.) and provide the basis for damage awards. Likewise, you have mentioned that protocols and methodologies relating to the taking of DNA samples for the "Covid 19"Polymerase Chain Reaction ("PCR") test are painful, intrusive and exacerbate existing medical conditions. Recently, the PCR tests were recalled and were never intended for diagnostic purposes to begin with. Certainly DNA material for the tests need not come from your nasal passages alone; therefore you have no reason to undertake such a test as traditionally applied. Clearly there are other ways to accommodate your needs. While the now clearly established widespread cross-immunity against SARS-CoV-2 implies that most of us are safe from severe COVID-19 disease, it also means that we are vulnerable to the harms of gene- based vaccines. Due to recall immunity against the virus, vaccination will cause our immune systems to fight aggressively against not only the SARS-CoV-2 spike protein, but against ourselves. This deleterious autoimmune attack must be expected to intensify with each repeated injection. The COVID-19 vaccine technology's interaction with the immune system creates the following four specific problems: 1. Flying under the immune system's radar with the vaccine's genetic code 2. Delivering the spike protein into the bloodstream 3. Inducing immune attack on the blood vessel lining 4. Enhancing the severity of natural infection 2.4.1. Flying Under the Immune System's Radar with the Vaccine's Genetic Code To understand why COVID-19 vaccine technology is dangerous, it is necessary to first understand how the gene-based vaccines differ from traditional vaccination methods. A conventional viral vaccine can be a live virus strain derived from the pathogenic virus that has been attenuated through one or more genetic mutations, or it can consist of chemically inactivated virus particles that are no longer able to infect any cells. In both cases, protein antigens will be exposed on the surface of the vaccine particles, which can be recognized by antibodies once these have been formed. COVID-19 vaccines, on the other hand, are not protein antigens but the genetic blueprint for the SARS- CoV-2 spike protein antigen. That blueprint comes in the form of mRNA or DNA, which, after vaccination, enters our body's cells and instructs those cells to manufacture the spike protein. The spike protein then protrudes from the cell and induces antibody formation. In response, the immune system will react not only with the spike protein, but will attack and try to destroy the entire cell. If we are injected with a traditional live virus vaccine to which we have no immunity, then these vaccine virus particles will also infect some of our body cells and propagate within them. Two kinds of immune reactions will then occur: 1. Cytotoxic T-lymphocytes (killer T-cells) (see section 2.4.3.1) that recognize viral protein fragments associated with the infected cells will proliferate, attack, and destroy the infected cells. 2. B-lymphocytes that recognize viral proteins (see section 2.4.3.2) will proliferate and start producing antibodies—soluble protein molecules that can recognize and neutralize virus particles. This immune reaction will in principle resemble that to an infection with the corresponding wild-type virus. It will be milder, since the vaccine strain of the virus has been attenuated; however, some cells will get destroyed in the process, which may sometimes cause functional organ damage.

Live virus vaccines therefore tend to be more prone to adverse reactions than are inactivated virus vaccines. Now, a key point to note is that if we inject a live traditional vaccine into a person who is already immune —due to either a previous vaccination, or to prior infection with the corresponding wild-type virus—the extent of cell destruction will be much reduced. Such a person will already have antibodies to the virus; these will recognize the viral protein antigens and will bind and inactivate most of the vaccine virus particles before they manage to infect a cell. Therefore, even though the killer T-cells may be all riled up, they will not find very many infected cells to pounce on. The crucial difference between a conventional live virus vaccine and a gene-based COVID vaccine—and in particular an mRNA vaccine—is that the latter contains no protein antigens whatsoever; instead, it only contains the blueprint for their synthesis inside the infected cells. Therefore, if such a vaccine is injected into a person with antibodies and existing T-cell immunity, the vaccine particles will “fly under the radar” of the antibody defence and reach our body cells unimpeded. The cells will then produce the spike protein, and subsequently be destroyed and attacked by the killer T-cells. The antibodies, rather than preventing the carnage, will join in by also binding to the cell-associated spike protein and directing the complement system (see later) and other immune effector mechanisms against these cells. In a nutshell, pre-existing immunity mitigates the risk of conventional vaccines, but it amplifies the risk of gene-based vaccines. Importantly, before COVID, this risky gene-based vaccine technology had never before been used on a wide scale against infectious disease and is inherently experimental. The COVID-19 vaccination program is thus the largest human experiment ever performed in history.

#### 2.4.2. Delivering the Spike Protein into the Bloodstream

A dire danger of COVID-19 vaccines is that spike proteins produced by myriad endothelial cells, i.e. the innermost cells lining blood vessel walls, will be exported to the cell surface and protrude directly into the bloodstream. Moreover, a fraction of these spikes will be cleaved during their passage to the outside world. They will fall off the cells into the bloodstream and then bind to their receptors on other endothelial cells at distant sites. While at the outset of the vaccination campaign in 2020 it was unknown to what extent COVID vaccines entered the bloodstream, human data from 2021 reveal that the spike protein shows up within the circulation on the very day of the injection [15]. Similarly, animal studies submitted by Pfizer to the Japanese government [24] found that the vaccine appears in the circulation within 15 minutes of intramuscular injection, reaching maximum plasma concentration within just two hours. Very high levels have subsequently been recorded in the liver, the spleen, the adrenal glands, and the ovaries. Vaccine components have also been observed in the central nervous system (the brain and the spinal cord), albeit at lower concentrations. Such widespread distribution throughout the body via the bloodstream is a feat that the SARS-CoV-2 virus does not usually achieve.

##### 2.4.2.1. Open Questions in the Ongoing Experiment

But how do COVID-19 vaccine particles enter the circulation in the first place? The vaccine is injected intramuscularly, and the vaccine particles are too large to passively diffuse across blood vessel walls. Most obviously, the vaccines will follow the conventional, relatively time-consuming path which takes them via the draining lymph nodes to the blood circulation. But additionally, two possibilities for very rapid entry into the bloodstream should be heeded. The first is via direct uptake by vessels that are damaged during insertion of the needle. Secondly, it is possible that the vaccine particles undergo ‘transcytosis’, a process that enables large molecules to be transported across intact cell layers. Whatever the case may be, although Pfizer knew before the onset of clinical trials that their vaccine reached the bloodstream rapidly, either they failed to file these findings with medical regulators in Europe, the US and other Western countries, or the regulators failed to act upon the findings [25]. This is a critical oversight where patient safety is concerned. Given that the gene-based vaccines induce the body's cells to become immune targets, where in the body this takes place is of critical concern. While immune-mediated cell death is never favourable, it is particularly detrimental and dangerous if it afflicts the blood vessel walls.

##### 2.4.3. Attacking the Vessel Walls: Clotting and Leaky Vessels

While all vaccines seek to stimulate an immune response, not all immune responses are created equal. Some are safe and well-modulated whereas others can be misdirected and out of control. Immune responses are problematic when they attack the self, as in autoimmune conditions, and/or when they are excessively intense and severe. COVID-19 vaccines incur problematic immunity in both key ways. First, they can be expected mobilise a self-to-self immune response against the endothelial cells lining blood vessel walls. Second, by boosting SARS-CoV-2 immunity, they can be expected to incite an increasingly aggressive response with each administration of the vaccine. To understand the realities of these processes it is necessary to first understand the basics of the underlying immune response. There are three key components of the immune system relevant to risks from COVID-19 vaccines: T-cells, antibodies and the complement cascade.

##### 2.4.3.1. T-

Once the body's cells have been infected with a virus, immune cells known as cytotoxic T-cells or T-killer cells attack and destroy the infected cells. This prevents infected cells from replicating the virus and spreading the infection throughout the body. After the initial battle with a certain pathogen is over, some of the specifically adapted T-cells enter a state of dormancy to become memory T-cells. In case the same virus is encountered again, these dormant T-cells can be swiftly reawakened and propagated to mount a faster and more vigorous response next time. Known as a secondary or memory-type response, it will also occur with viruses that are not exactly the same as the one initially encountered but sufficiently similar to be recognised. This latter phenomenon is referred to as cross-immunity. It has been known since mid 2020 that we are protected against SARS-CoV-2 by cross-reactive memory T-cells [7-11]. As with antibodies, this is based on previous encounters with common cold coronaviruses, and with the SARS virus in a small number of people. Such prior experience has been found to confer "robust" [7] and lasting T-cell cross-immunity to COVID-19. T-cell memory for the SARS virus is known to last at least 17 years [7], but it likely lasts a lifetime.

**2.4.3.2. Antibodies** Before the new discoveries of 2021, scientists' concerns about clotting and bleeding were based primarily on the prediction that killer T-cells would attack spike-producing endothelial cells, causing lesions on vessel linings and promoting blood clots. While this mechanism remains valid, we now know that a memory-type antibody response will join the attack on the vessel walls as well. Whereas killer T-cells attack their targets cell-to-cell, antibodies are proteins that exert their effect by binding to signature structures on the pathogen's surface, known as epitopes. Instead of destroying cells directly, once attached to an epitope, antibodies help to defeat invaders by "calling out the cavalry" on infected cells. This leads to the second process by which cells coated with viral spikes will inadvertently come under immune attack. "Calling out the cavalry" means that the antibodies attached to the unnaturally created spikes will trigger activation of the complement system, which thereupon will mount a massive attack on the endothelial cells. Importantly for deciphering the recent discoveries on SARS-CoV-2 immunity, the first time that the immune system encounters a new pathogen, new antibodies in a shape capable of binding to that pathogen's epitopes must be formed (by immune cells known as B-cells). First-time antibody production is slow, taking approximately four weeks. Should the same pathogen or family of pathogens invade again, however, memory-type antibodies are then manufactured more rapidly, within one to two weeks. This is a cardinal sign that the immune system has seen that pathogen before.

Another defining feature of a memory antibody response concerns the order in which antibody sub-types are produced. If a pathogen is new, IgM is the first type of antibody to arrive on the scene. It is followed later by IgG and IgA. The next time the pathogen arrives, however, IgG and IgA will be the first to arrive, indicating that the virus, or its relatives, have invaded before. Importantly, this is precisely what we see with COVID-19. Several research groups found in 2021 that upon first exposure to SARS-CoV-2, and following COVID-19 vaccination, the antibody response was characteristic of the memory type, due both to the timing and nature of antibodies measured. [xv-xvii] As a result, we now know that our immune systems recognise SARS-CoV-2 at first sight, even "on the slightest viral challenge" [5]. In other words, SARS-CoV-2 is not a novel coronavirus after all. With respect to variants and the need for booster shots, memory B-cells, like memory T-cells, can recognise not only a specific virus, but a whole family of viruses bearing related epitopes. It is unsurprising, therefore, that memory B-cells recognise SARS-CoV-2 from the common cold. With cross immunity this robust, closer relatives of SARS-CoV-2 in the form of variants will pose no obstacle to our antibody response. The rising "cases", hospitalisations and deaths attributed to Delta and other variants are therefore almost certainly driven by false positive PCR results and misclassification than by a true increase in COVID-19 disease. Indeed, according to Public Health England data, the Delta variant is non-lethal in those under 50, and less than half as lethal as earlier strains in older age groups [26]. But why haven't circulating antibodies to SARS-CoV-2 been detected in populations before? The answer is that neither the antibodies nor T-cells associated with a memory-type response circulate in the bloodstream. Once they are no longer needed, they become dormant, existing as a memory alone.

Unless elicited by re-exposure to a virus, they remain invisible in the bloodstream. The dormant antibodies will, however, be ready and waiting to re-activate and call out the cavalry on the spike protein, in the form of the complement cascade.

**2.4.3.3. Complement** Recent findings indicate that complement activation is a serious concern with respect to COVID-19 vaccine-immune interactions. In light of the newly characterised antibody response to SARS-CoV-2, when antibodies attach to spike-producing endothelial cells on vessel walls following vaccine administration, activated complement proteins can be expected to attach to the endothelial cells, and perforate their cell membranes [27,28]. The ensuing death of the endothelial cells will expose the tissue

underneath the epithelium, which will initiate two significant events. It will induce blood clotting, and will cause the vessel walls to leak [6]. This pathogenic mechanism has been documented in biopsies taken from SARS-CoV-2-infected patients [19,29]. Those studies have described a “catastrophic microvascular injury syndrome mediated by activation of complement” [29] as part of the SARS-CoV-2 spike protein immune response. It is precisely this immune response that COVID-19 vaccines seek to induce. Such vaccine-immune interactions are consistent with adverse events involving visible capillary rupture under the skin that have been documented and reported following COVID-19 vaccination [30–33].

#### 2.4.3.4. Leaky Vessels—The Promise of Booster Shots

Given that booster shots repeatedly boost the immune response to the spike protein, they will progressively boost self-to-self immune attack, including boosting complement-mediated damage to vessel walls. Clinically speaking, the greater the vessel leakage and clotting that subsequently occurs, the more likely that organs supplied by the affected blood flow will sustain damage. From stroke to heart attack to brain vein thrombosis, the symptoms can range from death to headaches, nausea and vomiting, all of which heavily populate adverse reactions to COVID-19 vaccines [2]. As well as damage from leakage and clotting alone, it is additionally possible that the vaccine itself may leak into surrounding organs and tissues. Should this take place, the cells of those organs will themselves begin to produce spike protein, and will come under attack in the same way as the vessel walls. Damage to major organs such as the lungs, ovaries, placenta and heart can be expected ensue, with increasing severity and frequency as booster shots are rolled out.

#### 2.4.4. Enhancing the Severity of Wild Coronavirus Infection

Finally, as with the Dengue virus and several other viruses [34], antibodies to coronaviruses can ultimately aggravate rather than mitigate illness. This is called antibody-dependent enhancement of disease. The underlying mechanisms remain to be elucidated but it is already clear that the net effects are severely detrimental. Attempts to develop vaccines to the original SARS virus, which is closely related to SARS-CoV-2, repeatedly failed due to antibody-dependent enhancement of disease [35–37]. The vaccines induced antibodies, but when the vaccinated animals were subsequently infected with the wild-type virus, they became more ill than the unvaccinated animals, in some cases mortally so [38].

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#### 2.6.4 Summary

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(2011) A double-inactivated severe acute respiratory syndrome coronavirus vaccine provides incomplete protection in mice and induces increased eosinophilic proinflammatory pulmonary response upon challenge. J. Virol. 85:12201-15 39. World Medical Association, (2017) WMA Declaration of Geneva Japan drops vax rollout, goes to Ivermectin, ENDS COVID almost overnight (27 October 2021) The ongoing COVID-19 nonsense here in the United States exists solely and exclusively because our governments have failed to use the correct treatment. They used so-called "vaccines" when Japan has just proven, in less than ONE MONTH, that Ivermectin can wipe out the disease. Sweden's Public Health Agency on Wednesday recommended a temporary halt to the use of the Moderna COVID-19 vaccine among young adults, citing concerns over rare side effects to the heart. It said the pause should initially be in force until December 1, explaining that it had received evidence of an increased risk of side effects such as inflammation of the heart muscle (myocarditis) and inflammation of the pericardium (pericarditis). {link to CBS News (Secure)} Finland, Denmark and Norway have also moved away from the COVID vaccines. Finland last Thursday joined Sweden, Denmark and Norway in recommending against use of Moderna Inc.'s Covid-19 vaccine in younger age groups, citing risks of rare cardiovascular side effects they said warranted the precautionary steps. Finland's Institute for Health and Welfare said last Thursday it would pause use of the Moderna vaccine among men under the age of 30, following a similar step last Wednesday by Swedish regulators. Denmark last Wednesday said it wouldn't offer the Moderna vaccine to under-18s as a precautionary measure. Norway on Wednesday advised that all under-18s shouldn't be given the Moderna vaccine, even if they had already received one dose, and recommended that men under 30 consider getting the vaccine developed by Pfizer Inc. and BioNTech instead. Norwegian officials cited U.S., Canadian and Nordic data, saying the absolute risks remain low and calling the advice "a precautionary measure." The European Medicines Agency said Thursday that new preliminary data from the Nordic countries supports a warning the agency adopted in July that inflammatory heart conditions called myocarditis and pericarditis can occur in very rare cases following vaccination with Covid-19 shots made by Moderna and Pfizer-BioNTech. By far, however, the absolute superstar among foreign nations dealing with COVID is Japan. Japan has PULLED the vaccines and substituted Ivermectin - and in one month, wiped COVID out in that country! \* Safe? Japan pulls Moderna vax, ends nationwide vax drive after "magnetic" "metals" found to contaminate jabs: [link to asia.nikkei.com (secure)] \* Three lots of Moderna jabs recalled in Japan over stainless steel contamination: \* Several Japanese cities report white stuff floating in jab vials: \* Japan minister of health tells docs to recommend IVM: [link to rclutz.com (secure)] \* Japan now a MAJOR SUCCESS STORY after it BEATS COVID rapidly: [link to www.msn.com (secure)] Any questions? Just so you understand the timeline. By September deaths from the COVID-19 Vaccine jabs were being investigated. At roughly that time, the vials were under scrutiny and metal "magnetic" material was found in them. Very shortly thereafter, the Japanese minister of health announced doctors could prescribe Ivermectin. A month later, the Western press is shocked that COVID has all but disappeared from the island. Get it? Understand? This is what it looks like in a country that still has rule of law. The government responds to

reports of death and contaminated vaxes, moves to real treatment, people get better, and the virus disappears. Now compare that to what is happening in the United States and in Australia and New Zealand. All three countries are in dismal failure in their handling of COVID-19, and that failure has resulted in staggering loss of freedom and destruction of commerce. This is the biggest news story right now. Japan has ended COVID. It did it after it stopped the vax rollout and went to Ivermectin. Period. Hard stop.

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[6] <https://www.nytimes.com/interactive/2020/health/oxford-astrazeneca-covid-19-vaccine.html> [7] <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained> Page 22 of 63 [8]'Over more than 3 decades, promising lipids studied in the lab often failed to live up to their potential when tested in animals or humans. Positively charged lipids are inherently toxic, and companies struggled for years before landing on formulations that were safe and effective. When injected intravenously, the particles invariably accumulated in the liver, and delivery to other organs is still an obstacle. Reliably manufacturing consistent LNPs was another challenge, and producing the raw materials needed to make the particles is a limiting factor in the production of COVID-19 vaccines today.' Without these lipid shells, there would be no mRNA vaccines for COVID-19, by Ryan Cross, Chemical & Engineering News, March 6, 2021. <https://cen.acs.org/pharmaceuticals/drug-delivery/Without-lipid-shells-mRNAVaccines/> 99/i8 [9] ADVERSE EFFECTS OF MESSENGER RNA VACCINES An Evidence Review from the Penn Medicine Center for Evidence-based, Practice December 2020, director Nikhil K. Mull, MD (CEP) Lead analyst: Matthew D. Mitchell, PhD (CEP)Clinical review Patrick J. Brennan, MD. (CMO)<http://www.uphs.upenn.edu/cep/COVID/mRNA%20vaccine%20review%20final.pdf> at p.11, Primary Studies. [10] According to the Section 564 of the Federal Food, Drug, and Cosmetic Act, a lawful application of the terms of a lawful emergency use authorization ("EUA") pursuant includes (e)(1)(A)(i)(III): (III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks. 21 USCS § 360bbb-3 <https://www.law.cornell.edu/uscode/text/21/360bbb-3> [11] (II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown. 21 USCS § 360bbb-3 <https://www.law.cornell.edu/uscode/text/21/360bbb-3> How will vaccine recipients be informed about the benefits and risks of any vaccine that receives an EUA? FDA must ensure that recipients of the vaccine under an EUA are informed, to the extent practicable given the applicable circumstances, that FDA has authorized the emergency use of the vaccine, of the known and potential benefits and risks, the extent to which such benefits and risks are unknown, that they have the option to accept or refuse the vaccine, and of any available alternatives to the product. Typically, this information is communicated in a patient "fact sheet." The FDA posts these fact sheets on our website. <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained> [12] "The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below. These principles apply if an employee gets the vaccine in the community or from the employer." <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-adarehabilitation-act-and-other-eeo->

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<https://science.sciencemag.org/content/suppl/2020/05/05/science.abc1932.DC1> 23. The ImmunityBio Vaccine utilized aborted fetal cells - <https://www.biorxiv.org/content/10.1101/2020.07.29.227595v1.full> 24. The Institut Pasteur Vaccine utilized aborted fetal cells - <https://www.pnas.org/content/pnas/117/51/32657.full.pdf> 25. The Rega Vaccine utilized aborted fetal cells - <https://www.nature.com/articles/s41586-020-3035-9> 26. The Anhui Zhifei Vaccine utilized aborted fetal cells - [https://www.cell.com/cell/fulltext/S0092-8674\(20\)30812-6](https://www.cell.com/cell/fulltext/S0092-8674(20)30812-6) 27. The Clover Vaccine utilized aborted fetal cells - <https://www.biorxiv.org/content/10.1101/2020.09.24.311027v1.full>

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If permitted an exemption or delay in taking the vaccine, what types of accommodation would enable you to perform your job duties without presenting a risk of transmission to others?

Continued remote/telework option as I've been doing for 20+ months while self quarantining.

Have you contacted anyone regarding this reasonable accommodation request?

No

Do you work in a SCIF?

No

I have read the Privacy Act Statement

true

From: **Meindl, Max** <max.meindl@dhs.gov>  
To: **Max** <femamax@gmail.com>  
Subject: RA  
Date: 02.11.2021 12:51:28 (+01:00)

## Intranet Homepage

# 1 WEEK TO COMPLY WITH THE VACCINE MANDATE

*Click here for more information*



Make your appointment at [Vaccines.gov](#). Based on the Monday, Nov. 22 deadline outlined in the [Executive Order](#), these are your LAST CHANCE dates:

- No later than Nov. 8: Second Moderna or Pfizer-BioNTech dose.
- No later than Nov. 8: J&J vaccine single dose.

The [DHS Vaccine Status System \(VSS\)](#) has been updated to allow employees to upload proof of vaccination. If you are vaccinated, upload your proof of vaccination into VSS by no later than Tuesday, Nov. 9.

Get more information from the [COVID-19 Employee Resource Center](#).

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Program Delivery Task Force Lead | DR-4611-LA Debris Task Force | Emergency Management Specialist  
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Federal Emergency Management Agency  
[www.FEMA.gov](http://www.FEMA.gov)



# FEMA

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To: **Max** <femamax@gmail.com>  
Subject: ra  
Date: 28.10.2021 16:22:19 (+02:00)  
Attachments: RAR0023278 for COVID-19 Vaccine Exemption (for RELIGIOUS reasons) has been received by review board.eml (1 page), RAR0023261 for COVID-19 Vaccine Exemption (for MEDICAL reasons) has been received by review board.eml (1 page), RAR0023025 has comments added.eml (1 page), Office of Accessible Systems and Technology (OAST) Satisfaction Survey.eml (1 page), RAR0023025 has been assigned to you.eml (1 page), RAR0023025 has been assigned to your group.eml (1 page), Your request for Reasonable Accommodation Request has been received.eml (1 page)

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To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
CC: **Meindl, Max** <max.meindl@fema.dhs.gov>; **Bergin, John** <john.bergin@fema.dhs.gov>  
Subject: RAR0023278 for COVID-19 Vaccine Exemption (for RELIGIOUS reasons) has been received by review board  
Date: 28.10.2021 16:19:22 (+02:00)

## Office of the Chief Information Officer **OAST ACMS Notification**

Max Meindl,

This email is to notify you that your reasonable accommodation (RA) request for the COVID-19 Vaccinate Mandate Exemption has been received by your respective Component.

The RA ticket number is RAR0023278 and has been routed to your respective Component's appropriate review board for processing. It will take several weeks for the board to review and decide. Thank you for your patience.

If you have any questions, please contact your respective Component's point of contact, which can be found here at <https://dhsconnect.dhs.gov/org/offices/crcl/eeo/Pages/Reasonable-Accommodations-at-DHS.aspx>.

**\*\* For privacy reasons, DO NOT EMAIL or FAX MEDICAL DOCUMENTS to the DHS Accessibility Help Desk! \*\***

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23614640

From: **ITSERVICENOW** <ITSERVICENOW@hq.dhs.gov>  
To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
CC: **Meindl, Max** <max.meindl@fema.dhs.gov>; **Bergin, John** <john.bergin@fema.dhs.gov>  
Subject: RAR0023261 for COVID-19 Vaccine Exemption (for MEDICAL reasons) has been received by review board  
Date: 28.10.2021 16:00:51 (+02:00)

## Office of the Chief Information Officer **OAST ACMS Notification**

Max Meindl,

This email is to notify you that your reasonable accommodation (RA) request for the COVID-19 Vaccinate Mandate Exemption has been received by your respective Component.

The RA ticket number is RAR0023261 and has been routed to your respective Component's appropriate review board for processing. It will take several weeks for the board to review and decide. Thank you for your patience.

If you have any questions, please contact your respective Component's point of contact, which can be found here at <https://dhsconnect.dhs.gov/org/offices/crcl/eeo/Pages/Reasonable-Accommodations-at-DHS.aspx>.

**\*\* For privacy reasons, DO NOT EMAIL or FAX MEDICAL DOCUMENTS to the DHS Accessibility Help Desk! \*\***

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23613992

From: **ITSERVICENOW** <Accessibility@HQ.DHS.GOV>  
To: **Aybar-Morales, Miriam** <miriam.aybarmorales@fema.dhs.gov>; **Meindl, Max** <max.meindl@fema.dhs.gov>  
CC: **Meindl, Max** <max.meindl@fema.dhs.gov>; **Bergin, John** <john.bergin@fema.dhs.gov>  
Subject: RAR0023025 has comments added  
Date: 28.10.2021 14:54:03 (+02:00)

Office of the Chief Information Officer  
**OAST ACMS Notification**

## RAR0023025 - Telework , Telework: 100%

### Comments:

**2021-10-28 10:53:09 EDT - Aybar-Morales, Miriam**

Additional comments

Employee is requesting exemption from vaccine mandate. Provided guidance (screenshots) of appropriate categories and forms for employee to resubmit exemption request in MS Teams

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23611566

From: **ITSERVICENOW** <ITSERVICENOW@hq.dhs.gov>  
To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
Subject: Office of Accessibile Systems and Technology (OAST) Satisfaction Survey  
Date: 28.10.2021 14:43:31 (+02:00)

## Office of the Chief Information Officer **OAST ACMS Notification**

You have been invited to take the survey: Office of Accessibile Systems and Technology (OAST) Satisfaction Survey regarding your recent request **RAR0023025**

You may access the survey [here](#) or by going to "My Surveys" in the IT Service Portal.

Your feedback will help us improve our services.

Thank you,

OAST

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23611246

From: **ITSERVICENOW** <Accessibility@HQ.DHS.GOV>  
To: **Aybar-Morales, Miriam** <miriam.aybarmorales@fema.dhs.gov>  
CC: **Meindl, Max** <max.meindl@fema.dhs.gov>; **Bergin, John** <john.bergin@fema.dhs.gov>  
Subject: RAR0023025 has been assigned to you  
Date: 28.10.2021 14:35:02 (+02:00)

## Office of the Chief Information Officer **OAST ACMS Notification**

RAR0023025 has been assigned to you.

**Assigned To:**

**Ticket Number:** RAR0023025; click [here](#)

**Requested for:** Meindl, Max

**Date & Time:** 2021-10-28 10:34:31 EDT

[This is an automated email generated by ACMS. This ticket has been created or updated by Lisa Kosh; email address is lisa.kosh@fema.dhs.gov on 2021-10-28 10:34:31 EDT]

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23610998

From: **ITSERVICENOW** <Accessibility@HQ.DHS.GOV>  
To: **Kosh, Lisa** <lisa.kosh@fema.dhs.gov>; **Dean, James** <james.c.dean@fema.dhs.gov>;  
**Perkins , Kevin** <kevin.perkins@fema.dhs.gov>  
CC: **Meindl, Max** <max.meindl@fema.dhs.gov>; **Bergin, John** <john.bergin@fema.dhs.gov>  
Subject: RAR0023025 has been assigned to your group  
Date: 28.10.2021 11:13:31 (+02:00)

## Office of the Chief Information Officer

### OAST ACMS Notification

RAR0023025 has been assigned to your group.

**Assigned To:** DHS OAST - FEMA Reasonable Accommodation Admin  
**Ticket Number:** RAR0023025; click [here](#)  
**Requested for:** Meindl, Max  
**Date & Time:** 2021-10-28 07:11:36 EDT

[This is an automated email generated by ACMS. This ticket has been created or updated by Max Meindl; email address is max.meindl@fema.dhs.gov on 2021-10-28 07:11:36 EDT]

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23605804

From: **ITSERVICENOW** <Accessibility@HQ.DHS.GOV>  
To: **Meindl, Max** <max.meindl@fema.dhs.gov>  
CC: **Meindl, Max** <max.meindl@fema.dhs.gov>; **Bergin, John** <john.bergin@fema.dhs.gov>  
Subject: Your request for Reasonable Accommodation Request has been received  
Date: 28.10.2021 11:13:31 (+02:00)

## Office of the Chief Information Officer **OAST ACMS Notification**

Max Meindl,

The FEMA Reasonable Accommodations Unit at the Office of Equal Rights (OER) is pleased to inform you that your request for reasonable accommodation has been received.

Your ticket number RAR0023025 has been assigned to the FEMA RA Section Chief for assignment to a FEMA RA Specialist.

The assigned RA Specialist will contact you in few business days to further discuss about your request. Reasonable Accommodation requests may take longer to process. To obtain a status on your reasonable accommodation request, please contact us at [fema-reasonable-accommodation@fema.dhs.gov](mailto:fema-reasonable-accommodation@fema.dhs.gov). Please make sure to have this ticket number handy.

**\*\* For privacy reasons, DO NOT EMAIL or FAX MEDICAL DOCUMENTS to the DHS Accessibility Help Desk! \*\***

This is an official notification from the DHS Office of Accessible Systems & Technology (OAST). To unsubscribe from future notifications please access your [Notification Preferences](#).

Ref:MSG23605805



# FEMA

FEDERAL EMERGENCY MANAGEMENT AGENCY  
REASONABLE ACCOMMODATION INFORMATION SHEET

Requester's Name:	Max J Meindl	
Requester's FEMA Email Address:	<a href="mailto:Max.meindl@fema.dhs.gov">Max.meindl@fema.dhs.gov</a>	
Requester's FEMA Cell # (if available) or preferred telephone number:	FEMA Cell:202-374-9426 Personal cell: (if preferred)	
Requester's Series and Grade when applicable:	Grade: 11 Series: 1	
Requester's Program Office:	Branch/Division: Reg 6, recovery Where located: Houston Address: 8223 Willow Place Dr. S., Houston, TX 77070	
If SURGE employee, Agency and Program:	FEMA	
Date of requester's 1 <sup>st</sup> contact with OER, ERA or Supervisor of Record (SOR):	Thursday, August 23, 2018 1:08 PM	
Date request was referred to OER:		
Date response was received from OER:	Thursday, August 23, 2018 10:22 PM	
Date of interactive discussion with Supervisor of Record:		
Type of Employee (Reservist, PFT, CORE, Local Hire, Surge)	CORE	
If a reservist, include CADRE to which you are assigned:	N/A	
If a CORE, PFT, TFT or Local Hire, include official duty station, Branch, Division, Program Office or Unit where you work, including address.	Branch II Office 8223 Willow Place Drive South Houston, TX 77070 USNG: 15R TP 53601 17072	
If you are deployed, include disaster number and location where you are deployed or will be deployed:	4332TX, Houston, TX	
Name of your current supervisor of record: (For reservists, this will be either their reservist program manager or cadre coordinator. For CORE or PFT employees, this may be their first level supervisor)	Detra S. Terry, PA Program Delivery Task Force Lead, DR-4332-TX, 202.718.0109 FEMA cell, <a href="mailto:detra.terry@fema.dhs.gov">detra.terry@fema.dhs.gov</a>  Branch II Office 8223 Willow Place Drive South Houston, TX 77070	
If SURGE employee, name of your onsite supervisor		
Only for applicants for employment - If you are an applicant for employment, include date of interview, name of point of contact (POC) for interview, announcement number and position:	Date of Interview: POC: Announcement #: Position:	
Only for applicants for employment - If you are an applicant for employment, have you already requested a reasonable accommodation? If yes, who did you request it to? What accommodation did you request? Was it provided?	Yes <input type="checkbox"/> No <input type="checkbox"/>  Who: RA requested: Was it provided?	
Do you have a previously approved reasonable accommodation, if yes, do you have related documents showing you have an approved accommodation? Please provide it.	Previous RA: Yes <input type="checkbox"/> No X Documents: Yes <input type="checkbox"/> No X	

	If yes, please provide it.			
<b>Identify what accommodation you believe you need:</b> (please be specific)	Requesting to be able to tele-work as required since I have travel restrictions due to an illness and injury I have recently sustained.			
<b>Identify the reasons for the requested accommodation:</b> (please be specific)	Cardiologist had advised for me to avoid overt stress, extensive travel, 60 miles one way to work, 12-15 commuting hours weekly, until I completely recover from Cardiac illness, (several heart attacks) and complete rehabilitation			
<b>Where the disability or need for an accommodation is not obvious, do you have any medical documentation from a health care provider that supports the accommodation requested:</b>	<table border="1"> <tr> <td>Yes X</td> <td>No</td> </tr> </table> <p>If yes, please provide it. Must meet with new primary care doctor, VA hospital reluctant to provide any documentation.</p>	Yes X	No	
Yes X	No			
<b>Have you been requested medical documentation or updated one:</b>	<table border="1"> <tr> <td>Yes X</td> <td>No</td> </tr> </table> <p><b>Date:</b> From: Meindl, Max  <b>Sent:</b> Thursday, September 6, 2018 5:08 PM  <b>To:</b> Maddox Britt, Sandra &lt;sandra.maddox-britt@fema.dhs.gov&gt;  <b>Subject:</b> Re: RA Request (Meindl), Sent from personal email in confidence</p>	Yes X	No	
Yes X	No			
<b>Have you previously filled out a 256-0-1 (Request for Reasonable Accommodation) for a previous request? If yes, when? Please provide it.</b>	<table border="1"> <tr> <td>Yes X</td> <td>No</td> </tr> </table> <p><b>Date:</b> Thursday, August 23, 2018 1:08 PM  <b>If you have it, please provide it.</b></p>	Yes X	No	
Yes X	No			
<b>If this is a new request for reasonable accommodation, please fill out a new 256-0-1 form. You may find it in intranet under Reasonable Accommodations.</b>				
<b>Has your supervisor of record, onsite supervisor or ERA attempted to provide you an interim (temporary) accommodation while the accommodation is being processed? Is there an interim accommodation in place, state what is the interim accommodation provided and date it was provided.</b>	<table border="1"> <tr> <td>Yes</td> <td>No</td> <td>X</td> </tr> </table> <p><b>Interim Accommodation:</b>  <b>Date:</b></p>	Yes	No	X
Yes	No	X		
<b>Have you contacted anyone regarding this reasonable accommodation request? If yes, provide the name, position, date and where (Supervisor of Record, Equal Rights Advisor, OER Case Manager, other).</b>	<table border="1"> <tr> <td>Yes</td> <td>No X</td> </tr> </table> <p><b>Name:</b>  <b>Position:</b>  <b>Date:</b>  <b>Place:</b></p>	Yes	No X	
Yes	No X			

DATE	NOTES
Date	



# FEMA

FEDERAL EMERGENCY MANAGEMENT AGENCY  
REASONABLE ACCOMMODATION INFORMATION SHEET


DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**REQUEST FOR REASONABLE ACCOMMODATION**

**Privacy Act Statement**

**Authority:** The Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a as amended, requires that you provide FEMA with certain information in order to process a request. The Rehabilitation Act of 1973, 29 U.S.C. § 701 as amended, stipulates that Federal agencies must provide reasonable accommodation to qualified individuals with disabilities. Further, Executive Order 13164 mandates that Federal agencies provide written procedures for requesting reasonable accommodations and maintain records in order to monitor the procedure's effectiveness.

**Purpose:** To provide reasonable accommodations to employees and applicants with disabilities according to Executive Order 13164.

**Routine Uses:** The information on this form may be disclosed as generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/ALL-033 - Reasonable Accommodations Records System of Records, 76 Fed. Reg. 41,274 (July 13, 2011) and upon written request, by agreement, or as required by law.

**Disclosure:** FEMA's obligation to consider an individual's request for reasonable accommodation begins when the individual makes the request. However, the Request for Reasonable Accommodation form should be filled out as soon as possible following a request. The disclosure of information on this form is voluntary; however, failure to provide the requested information may prevent FEMA from accommodating your request.

1. Applicant's/Employee's Name	2. Telephone Number	
3. Organization/Office	4. Date of Request	
5. Accommodation Requested (Be as specific as possible, e.g., sign language interpreter, or adaptive equipment such as voice recognition/keyboards, screen readers/magnification, etc.):		
6. Reason for Request:		
7. If accommodation is time sensitive, please explain:		
8. Applicant's/Employee's Title	9. Applicant's/Employee's Signature	10. Date

## **MANAGEMENT RESPONSE TO REQUEST FOR REASONABLE ACCOMMODATION**

11. Request for Reasonable Accommodation (check one):		<input type="checkbox"/> Granted	<input type="checkbox"/> Interim/Alternate Granted (Provide comments in number 16)
<input type="checkbox"/> Denied (if denied, answer questions in number 13 )			
12. Applicant's/Employee's Name			
13. Request for Reasonable Accommodation Denied Because (May check more than one box):			
<input type="checkbox"/> Accommodation Ineffective		<input type="checkbox"/> Accommodation Would Require Removal of an Essential Function of the job	
<input type="checkbox"/> Accommodation Would Cause Undue Hardship		<input type="checkbox"/> Accommodation Would Require Lowering of Performance or Production Standard	
<input type="checkbox"/> Medical Documentation Inadequate		<input type="checkbox"/> Other (Please identify):	
14. Detailed reason(s) for the denial of reasonable accommodation (Must be specific, e.g., why accommodation is ineffective or causes undue hardship):			
15. If the individual proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reason for the denial of the requested accommodation and why you believe the chosen accommodation would be effective:			
16. Comments			
17. If an individual wishes to request reconsideration of this decision, she/he must take the following steps:			
<ul style="list-style-type: none"> <li><input type="radio"/> An employee may appeal directly to his/her Second Level Supervisor. The employee may present additional information in support of his/her request.</li> <li><input type="radio"/> An applicant may appeal directly to the Disability Employment Program Manager of the Office of Equal Rights. The applicant may present additional information in support of his/her request.</li> </ul>			
18. If an individual wishes to file an EEO Complaint, or to pursue MSPB or union grievance procedures, she/he must take the following steps:			
<ul style="list-style-type: none"> <li><input type="radio"/> For an EEO complaint pursuant to 29 C.F.R. 1614, contact an EEO Counselor in the Office of Equal Rights within 45 days from the date of this denial of reasonable accommodation; or</li> <li><input type="radio"/> For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or</li> <li><input type="radio"/> Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3</li> </ul>			
19. Name Of Deciding Official	20. Signature Of Deciding Official	21. Date	

**1 Copy of this form must be provided to the employee or applicant who made the request.**

**1 Copy of this form must be provided to the Disability Employment Program Manager of the Office of Equal Rights.**

**DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency**

**REQUEST FOR WORK SCHEDULE**

**INSTRUCTIONS:** Choose the work schedule you would like to request per guidance in FEMA Manual 106-1-1 by checking the box and entering the required information. Submit the completed form to your supervisor for approval.

**SECTION I: Employee Information**

1. Check one of the following:		<input type="checkbox"/> New	<input type="checkbox"/> Change in Existing Work Schedule
2. Employee Name		3. Organization	4. Position Title
6. Office Telephone Number		7. Supervisor (Name/Title)	

**SECTION II: Schedule Selection (Select one of the following options)**

Traditional Work Schedule	<input type="checkbox"/> A fixed schedule based on facility business hours.
Compressed Work Schedule (CWS)	<input type="checkbox"/> CWS is an 80-hour biweekly basic work requirement scheduled for fewer than 10 workdays.  <input type="checkbox"/> Flexitour - A schedule where the employee works the normal 8-hour workday, but may select the arrival times within the hours of 7:00 a.m. to 9:30 a.m. (arrival) and 3:30 p.m. to 6:00 p.m. (departure).
Flexible Work Schedule (FWS)	<input type="checkbox"/> Maxiflex - A schedule that contains core hours on fewer than 10 workdays in the biweekly pay period. The employee may vary the number of hours worked on a given workday (between 6 a.m. and 6 p.m.) or the number of hours worked each week.

**DUTY HOURS:** Please indicate the arrival and departure times for each day below; complete the duty hours for both weeks, indicating your day(s) off.

<b>WEEK 1</b>		
<b>Monday</b>	_____ a.m. to	_____ p.m.
<b>Tuesday</b>	_____ a.m. to	_____ p.m.
<b>Wednesday</b>	_____ a.m. to	_____ p.m.
<b>Thursday</b>	_____ a.m. to	_____ p.m.
<b>Friday</b>	_____ a.m. to	_____ p.m.
<b>Saturday</b>	_____ a.m. to	_____ p.m.
<b>Sunday</b>	_____ a.m. to	_____ p.m.

<b>WEEK 2</b>		
<b>Monday</b>	_____ a.m. to	_____ p.m.
<b>Tuesday</b>	_____ a.m. to	_____ p.m.
<b>Wednesday</b>	_____ a.m. to	_____ p.m.
<b>Thursday</b>	_____ a.m. to	_____ p.m.
<b>Friday</b>	_____ a.m. to	_____ p.m.
<b>Saturday</b>	_____ a.m. to	_____ p.m.
<b>Sunday</b>	_____ a.m. to	_____ p.m.

Employee's official tour of duty must include a 30-minute uncompensated lunch or meal break.

**SECTION III: Approval**

EMPLOYEE'S SIGNATURE: \_\_\_\_\_

Date \_\_\_\_\_

SUPERVISORY ACTION:

- Approved (Forward signed form to timekeeper for coding)
- Disapproved (Attached written disapproval justification and maintain in employee file)
- Approved with the following modifications:

SUPERVISOR'S SIGNATURE: \_\_\_\_\_

Date \_\_\_\_\_

Change Effective: \_\_\_\_\_

**DEPARTMENT OF HOMELAND SECURITY  
FEDERAL EMERGENCY MANAGEMENT AGENCY  
TELEWORK APPLICATION AND AGREEMENT**

1. Check one of the following:						
<input checked="" type="checkbox"/> New Agreement <input type="checkbox"/> Change in Existing Agreement						
2. Employee Name Max Meindl		3. Organization FEMA		4. Position Title Emergency MGT Specialist		
6. Office Telephone No. 202-374-9426		7. Supervisor (Name/Title) Kirk Shadowens				
8. Type of Telework: <input type="checkbox"/> Regular (Core) <input checked="" type="checkbox"/> Situational (Episodic)						
<b>Part I - Completion of this agreement indicates that:</b>						
1. The employee's telework arrangement begins on <u>07/24/2018</u> (date)						
2. The employee's official tour of duty and location are listed below.						
DAY	Telework Days (Week 1)	Start and End Times		Telework Days (Week 2)	Start and End Times	
Monday						
Tuesday	Home Residence (07/24/18)	12:30	15:30			
Wednesday						
Thursday						
Friday						
3. Employee volunteers to participate in the program and to adhere to the applicable guidelines and policies. Agency concurs with employee participation and agrees to the applicable guidelines and policies.						
4. Employee understands that FEMA may require participating employee to work from their telework site, e.g., home, satellite office, or other location, during periods of Unscheduled Telework authorization due to area closures, dismissals, unforeseen emergencies or other reasons as authorized by the Supervisor.						
5. Management reserves the right to alter the employee's established telework schedule to accommodate peak workload office demands or for any other official purpose with advance notifications.						
6. Employee's official tour of duty must include at least a 30-minute uncompensated lunch.						
7. Employee's official duty station is: <u>Houston, TX</u> (City and State) for purposes such as pay, travel,						
etc. The location at which the employee is designated to work (i.e. 5 E Austin, Bellville, TX 77418 e., alternate work location) while not at the official duty station is: _____						
The phone number of the alternate worksite is <u>202-374-9426</u>						
8. Employee understands requirements for an adequate and safe office space and that these requirements must be met.						
9. An employee approved for telework is required to satisfactorily complete all assigned work, consistent with the approach adopted for all other employees in the work group.						
10. The employee will regularly meet/speak with the supervisor to receive assignments and to review completed work as necessary or appropriate. The employee's job performance will be evaluated on criteria and milestones determined by the supervisor with input from employee.						
11. Employee's Time and Attendance (WebTA) for all official duty time spent in a Telworking status will be recorded using the proper Telework code. The supervisor and employee are responsible for ensuring the accuracy of time and attendance reported for the employee's work at the official duty station and the alternative workplace. The supervisor agrees to certify biweekly the employee's Time and Attendance Daily Report for hours worked. The employee's timekeeper will retain a copy of the employee's work schedule.						
12. Employee agrees to participate in surveys and data calls relative to the FEMA Telework Program, as requested.						
13. The employee must obtain supervisory approval before taking leave in accordance with established office procedures in accordance with FEMAs Absence and Leave policies.. Use of sick leave, annual leave, or other leave credits during regularly scheduled telework time must be approved in advance by the supervisor. Overtime must be approved in advance by the supervisor.						
14. Employee will utilize Government equipment for official business only and in accordance with applicable laws, regulations, policies, etc., as well as safeguard said equipment Employee is responsible for servicing and maintaining employee-owned equipment.						
15. The employee agrees to permit access to their home by agency representatives when necessary to ensure proper maintenance of agency-owned equipment. Teleworkers should be given at least one day's advance notice of any such visit. Visits should only be done during regular working hours.						

16. Employee is covered under the Federal Employees Compensation Act in the course of performing official duties at the alternate work location or official duty station. Any accident or injury which occurs at the alternate work location must be brought immediately to the attention of the supervisor.

17. Employee's most recent performance rating must be at least equivalent to "proficient" or "achieved expectations".

18. Employee understands that telework is not a substitute for dependent care (child care or elder care) and that appropriate arrangements must be made to accommodate children and adults who cannot care for themselves, while performing official duties in a telework site.

19. The employee understands that the Government will not be responsible for any operating costs that are associated with the use of employee's home as an alternative workplace, for example home maintenance, insurance or utilities.

20. Employee will apply approved safeguards to protect Government records from unauthorized disclosure or damage and will comply with the provisions set forth in the Privacy Act of 1974, Public Act of 1974, Public Law 93-579, codified at Title 5, U.S.C., Section 55a.

21. The employee agrees to abide by the Department of Homeland Security and FEMA Standards of Ethical Conduct Standards while working on official duty.

22. Telework agreements will be reviewed and discussed between the employee and supervisor on an annual basis.

23. Management may terminate participation in this arrangement at any time.

24. The employee may withdraw from the program at any time. The supervisor and employee understand that either party may terminate the Telework agreement with reasonable advance notice, generally fourteen calendar days, but not less than seven calendar days and require the employee to resume working at his/her official duty station. Reasons for termination will be documented by the supervisor and/or employee and filed with this agreement.

#### Compliance with this Agreement

The employee's failure to comply with the terms of this agreement may result in the termination of this agreement and the telework arrangement. Failure to comply with the provisions of this agreement may also result in appropriate disciplinary or adverse action against the employee.

#### Part - II

##### Certification

By signing this agreement, the employee certifies that (s)he has read the terms of this agreement and agrees to follow the policies and procedures outlined in them as well as all other applicable regulations, policies, and procedures.

*Max Meindl*

Employee's Signature

Emergency Management Specialist

Jul 25, 2018

Title

Date

Supervisor's Signature

Title

Date

Telework Coordinator's Signature

Date Reviewed

#### Part III - Approval/Disapproval

Your request to participate in the telework program is:  Approved as written  Approved with the following modification(s)

--	--	--

Disapproved for the following reason(s):

- The employee does not have sufficient duties or work activities suitable for performance at an alternate work site.
- The employee's absence from the work place under a telework arrangement will unacceptably impact the operation of the work unit.
- The extent of supervision required for the employee could not be achieved in conjunction with a telework arrangement.
- The employee's alternative work site does not meet prescribed acceptability standards. (State the specific deficiency issue(s), such as: safety, two-way communications, access to required materials, IT security, or non-work related distractions and/or obligations.)
- The employee does not meet performance eligibility requirements. (State the specific deficiency issue(s) such as: writing, problem-solving, reliability for the following prescribed policies and procedures, organization/time management skills, or work quality/quantity.)
- The employee does not meet conduct-related eligibility requirements. (State the specific deficiency issues(s), such as: leave abuse, excessive absence, or a record of misconduct which precludes participation at this time. If no additional misconduct in one (1) year, employee may reapply.)
- Other (please specify): \_\_\_\_\_

Supervisor's Signature

Title

Date

Telework Program Coordinators Signature

Date

# Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor

Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT

OMB Control Number: 1235-0003  
Expires: 8/31/2021

## SECTION I: For Completion by the EMPLOYER

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_  
\_\_\_\_\_

Check if job description is attached: \_\_\_\_\_

## SECTION II: For Completion by the EMPLOYEE

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: \_\_\_\_\_  
First \_\_\_\_\_ Middle \_\_\_\_\_ Last \_\_\_\_\_

## SECTION III: For Completion by the HEALTH CARE PROVIDER

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax:(\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

**Mark below as applicable:**

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

\_\_\_\_ No \_\_\_\_ Yes. If so, dates of admission:  
\_\_\_\_\_

Date(s) you treated the patient for condition:  
\_\_\_\_\_

Will the patient need to have treatment visits at least twice per year due to the condition? \_\_\_\_ No \_\_\_\_ Yes.

Was medication, other than over-the-counter medication, prescribed? \_\_\_\_ No \_\_\_\_ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

\_\_\_\_ No \_\_\_\_ Yes. If so, state the nature of such treatments and expected duration of treatment:  
\_\_\_\_\_

2. Is the medical condition pregnancy? \_\_\_\_ No \_\_\_\_ Yes. If so, expected delivery date: \_\_\_\_\_

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: \_\_\_\_ No \_\_\_\_ Yes.

If so, identify the job functions the employee is unable to perform:  
\_\_\_\_\_

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):  
\_\_\_\_\_

**PART B: AMOUNT OF LEAVE NEEDED**

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery?  No  Yes.

If so, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition?  No  Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?  
 No  Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

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Estimate the part-time or reduced work schedule the employee needs, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions?  No  Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?  
 No  Yes. If so, explain:

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Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency : \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per episode

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

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**Signature of Health Care Provider**

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Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

# Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act)

## U.S. Department of Labor Wage and Hour Division



OMB Control Number: 1235-0003  
Expires: 8/31/2021

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

### **[Part A – NOTICE OF ELIGIBILITY]**

TO: \_\_\_\_\_  
Employee

FROM: \_\_\_\_\_  
Employer Representative

DATE: \_\_\_\_\_

On \_\_\_\_\_, you informed us that you needed leave beginning on \_\_\_\_\_ for:

- The birth of a child, or placement of a child with you for adoption or foster care;
- Your own serious health condition;
- Because you are needed to care for your \_\_\_\_\_ spouse; \_\_\_\_\_ child; \_\_\_\_\_ parent due to his/her serious health condition.
- Because of a qualifying exigency arising out of the fact that your \_\_\_\_\_ spouse; \_\_\_\_\_ son or daughter; \_\_\_\_\_ parent is on covered active duty or call to covered active duty status with the Armed Forces.
- Because you are the \_\_\_\_\_ spouse; \_\_\_\_\_ son or daughter; \_\_\_\_\_ parent; \_\_\_\_\_ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
  - You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately \_\_\_\_\_ months towards this requirement.
  - You have not met the FMLA's hours of service requirement.
  - You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact \_\_\_\_\_ or view the  
FMLA poster located in \_\_\_\_\_.

### **[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]**

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by \_\_\_\_\_.** (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request \_\_\_\_\_ is/\_\_\_\_ is not enclosed.
- Sufficient documentation to establish the required relationship between you and your family member.
- Other information needed (such as documentation for military family leave): \_\_\_\_\_

If your leave does qualify as FMLA leave you will have the following **responsibilities** while on FMLA leave (only checked blanks apply):

\_\_\_\_ Contact \_\_\_\_\_ at \_\_\_\_\_ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

\_\_\_\_ You will be required to use your available paid \_\_\_\_\_ sick, \_\_\_\_\_ vacation, and/or \_\_\_\_\_ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

\_\_\_\_ Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We have/have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

\_\_\_\_ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every \_\_\_\_\_. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

**If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.**

If your leave does qualify as FMLA leave you will have the following **rights** while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:

\_\_\_\_\_ the calendar year (January – December).

\_\_\_\_\_ a fixed leave year based on \_\_\_\_\_.

\_\_\_\_\_ the 12-month period measured forward from the date of your first FMLA leave usage.

\_\_\_\_\_ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.

- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on \_\_\_\_\_.
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have \_\_\_\_\_ sick, \_\_\_\_\_ vacation, and/or \_\_\_\_\_ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

\_\_\_\_ For a copy of conditions applicable to sick/vacation/other leave usage please refer to \_\_\_\_\_ available at: \_\_\_\_\_.

\_\_\_\_ Applicable conditions for use of paid leave: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

at \_\_\_\_\_.

#### PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**

# Designation Notice (Family and Medical Leave Act)

## U.S. Department of Labor Wage and Hour Division



OMB Control Number: 1235-0003

Expires: 8/31/2021

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employers is optional, a fully completed Form WH-382 provides an easy method of providing employees with the written information required by 29 C.F.R. §§ 825.300(c), 825.301, and 825.305(c).

To: \_\_\_\_\_

Date: \_\_\_\_\_

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided.

We received your most recent information on \_\_\_\_\_ and decided:

Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.

**The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:**

Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: \_\_\_\_\_

Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

**Please be advised (check if applicable):**

You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

We are requiring you to substitute or use paid leave during your FMLA leave.

You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position is is not attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

**Additional information is needed to determine if your FMLA leave request can be approved:**

The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than \_\_\_\_\_, unless it is not

(Provide at least seven calendar days)

practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

(Specify information needed to make the certification complete and sufficient)

We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

Your FMLA Leave request is Not Approved.

The FMLA does not apply to your leave request.

You have exhausted your FMLA leave entitlement in the applicable 12-month period.

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA. 29 U.S.C. § 2617; 29 C.F.R. §§ 825.300(d), (e). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 – 30 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**



# HIRING PEOPLE WITH DISABILITIES

## I. Purpose

This directive sets forth the Federal Emergency Management Agency policy concerning the responsibilities of the Agency Disability Program Manager (Employment), supervisors, and employees to effectuate the FEMA Disability Employment Program. This directive outlines the means by which the Agency can meet its disability recruitment goals and the procedures for requesting reasonable accommodation.

## II. Scope

This Directive applies to all Federal Emergency Management Agency (FEMA) organizations and personnel.

## III. Policy and Procedures

- A. The Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) is committed to serving all individuals equally. This commitment extends to individuals with disabilities. FEMA must provide access to Agency programs and activities equal to the access provided to non-disabled persons.
- B. It is FEMA's policy, in accordance with Sections 501 and 504 of the Rehabilitation Act of 1973, as amended, that no qualified individual with a disability shall be denied participation in, or benefits from, any program conducted by FEMA, including employment.
- C. This Directive supersedes Director's Policy 4-05, Equal Opportunity for Persons with Disabilities, dated November 8, 2005.
- D. It is FEMA's policy, in accordance with Section 508 of the Rehabilitation Act of 1973, as amended ([29 U.S.C. Section 794d](#)), requires FEMA to procure, use, maintain, and develop accessible electronic and information technology, unless doing so imposes an undue burden.
- E. Accommodations for people with disabilities are not mandatory if FEMA demonstrates, through the reasonable accommodation process, that in providing such accommodations an undue financial or administrative burden will be created, or that the accommodation will alter the fundamental nature of the program or activity under review. The Director Office of Equal Rights has been delegated authority to make the final decision in denying such accommodations.

## IV. Responsibilities

- A. Deputy Administrators and Staff Directors shall:

1. Actively support the Agency Disability Employment Program.

B. The Agency Disability Program Manager shall:

1. Promote the recruitment, employment, advancement, and retention of people with disabilities, especially those with targeted disabilities, including disabled veterans (particularly those with a 30 percent or more compensable service-connected disability).
2. Provide technical support and assistance in providing reasonable accommodations for applicants and employees with disabilities.
3. Analyze data to identify whether FEMA is making progress in the hiring of individuals with disabilities.

C. Supervisors shall:

1. Review proposed or vacant positions during initial recruitment, modifying or restructuring them when possible to allow the placement of a person with a disability. The SF-52, Request for Personnel Action, to recruit for positions, shall be annotated to alert the servicing personnel office of the desire to target recruitment of applicants with disabilities.
2. Give full and careful consideration to all applications referred under the Disability Employment Program.
3. Make appropriate accommodations for employees within 15 working days; 10 working days for applicants.
4. Provide for necessary retraining of employees with disabilities.
5. If an employee or supervisor is in a field location and they require assistance in accommodating a person with a disability, they should contact the Agency Disability Program Manager for assistance.

## V. Definitions

A. **Disability**, with respect to an individual, means:

1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual.
2. A record of such impairment. An example of "a record of such impairment" includes a person who has a history of, or is considered as having, a mental or physical impairment that substantially limits one or more of their major life activities. A "history" of impairment covers persons who have recovered from substantially limiting physical or mental impairments. Examples of persons who would fall under this part of the definition of the term "disability" include individuals who have histories of substantially limiting forms of heart disease or mental or emotional illness.
3. Being regarded as having such impairment. For example, an individual who walks with a slight limp may be regarded as physically unable to walk but actually not be substantially limited in either that major life activity or in the major life activity of

working. An individual may have no impairment at all but would be deemed protected by the Rehabilitation Act if an agency wrongly perceives him/her as having a substantially limiting impairment.

- B. **Essential functions** are the fundamental duties of a job that must be performed with or without an accommodation.
- C. **Major life activities** are functions which include, but are not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, sitting, standing, reaching, interacting with others, concentrating, lifting, sleeping, reproduction, running, and working.
- D. **Mental impairment** is any psychological or mental disorder which may include intellectual disability, organic brain syndrome, emotional or mental illness or specific learning disability.
- E. **Physical impairment** is any physiological disorder or condition which may include ailments which affect one or more of the following body systems: neurological, musculoskeletal, sensory organs, respiratory, cardiovascular, reproductive, digestive, genital-urinary, hemic and lymphatic, and skin or endocrine.
- F. **Qualified individual with a disability** is a person with a disability who satisfies the skill, experience, education, and other job-related requirements of the job which the person holds or for which the person applies. In addition, the person can, with or without reasonable accommodation, perform the essential functions of the job.
- G. **Reasonable accommodation** is a change in the work environment or the application process that would enable a qualified individual with a disability to enjoy equal employment opportunities. There are three general categories of reasonable accommodations:
  1. Changes to a job application process to ensure that applicants with disabilities have an equal opportunity to participate in the application process and to be considered for jobs.
  2. Changes which enable a person with a disability to perform the essential functions of the job or to gain access to the workplace; and,
  3. Changes which allow persons with disabilities to have equal access to the benefits and privileges of employment.
- H. **Substantially limits** refer to the degree of impairment, distinct from minor impairment that impacts major life activities.
- I. **Undue hardship** involves a specific accommodation which may result in significant difficulty or expense. The determination of what constitutes an undue hardship is made on a case-by-case basis and pertains to the cost of the accommodation, the financial resources of FEMA as a whole.
- J. **Targeted disabilities** are disabilities that the Federal Government, as a matter of policy, has identified for special emphasis in affirmative action programs. They include: deafness; blindness; missing extremities; partial paralysis; complete paralysis;

convulsive disorders; intellectual disability; mental illness, and distortion of limb and/or spine.

- K. **Disabled veterans** are individuals with disabilities who were separated under honorable conditions from active duty in the Armed Forces and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Veterans Administration or a military department.

## VI. Authorities

- A. Section 501 of the Rehabilitation Act of 1973, as amended ([29 U.S.C. Section 791](#)).
  - 1. Prohibits selection criteria and standards that tend to screen out people with disabilities, unless such procedures have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.
  - 2. Requires Federal agencies to develop affirmative action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action must be an integral part of ongoing agency personnel management programs
- B. Section 508 of the Rehabilitation Act of 1973, as amended ([29 U.S.C. Section 794d](#)).
- C. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended ([38 U.S.C. 4212](#)).
- D. The Veterans Education and Employment Program Amendments of 1991.
- E. *Executive Order 13078, Increasing Employment of Adults with Disabilities, established the National Task Force on Employment of Adults with Disabilities* (now referred to as the Presidential Task Force).
- F. *Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information.*
- G. *Executive Order 13163, Increasing the Opportunity for Individuals with Disabilities to be employed in the Federal Government.*
- H. *Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.*
- I. *Executive Order 13217, Community-Based Alternatives for Individuals with Disabilities.*
- J. *Executive Order 13548, Model Strategies for Recruitment and Hiring of People with Disabilities.*
- K. Schedule A, 5 CFR 213.3102(t), *Hiring People with Intellectual Disabilities.*
- L. Schedule A, 5 CFR 213.3102(u), *Hiring People with Severe Physical Disabilities.*
- M. Schedule A, 5 CFR 213.3102(l), *Hiring Readers Interpreters, and Other Personal Assistants.*
- N. Schedule B, 5 CFR 213.3202(k), *Hiring People Who Have Recovered from Mental Illness.*

## **VII. Responsible Office**

Office of Equal Rights, (OER)

## **VIII. Supersession**

Replacing Director's policy 4-05, Equal Opportunity for Persons with Disabilities, dated November 8, 2005.

## **IX. References**

- A. FEMA 1430.1, *Reasonable Accommodations for the Federal Emergency Management Agency — Change 1*
- B. FEMA 1420.1, *Access to Agency Programs and Activities by Persons with Disabilities*
- C. 5 CFR 213.3102(t), *Hiring People with Intellectual Disabilities*
- D. 5 CFR 213.3102(u), *Hiring People with Severe Physical Disabilities*
- E. 5 CFR 213.3102(l), *Hiring Readers Interpreters, and Other Personal Assistants*
- F. 5 CFR 213.3202(k), *Hiring People Who Have Recovered from Mental Illness*

## **X. Forms Prescribed**

- A. 14-13, Request for Reasonable Accommodation
- B. 14-13A, Reasonable Accommodation Information Reporting

## **XI. Attachments**

None.

## **XII. Questions**

Questions pertaining to this Directive should be addressed to the FEMA Office of Equal Rights (OER) at (202) 646-3535.

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Pauline Campbell  
Director  
Office of Equal Rights

Date: \_\_\_\_\_

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W. Craig Fugate  
Administrator  
FEMA

Date: \_\_\_\_\_



# FEDERAL EMERGENCY MANAGEMENT AGENCY

## **MANUAL**

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Date

Number

December 3, 2002

1430.1 Chg. 1

ER

### **Reasonable Accommodation for the Federal Emergency Management Agency**

#### **Foreword**

**1. Purpose.** This transmits changes to FEMA Manual 1430.1, "Reasonable Accommodation for the Federal Emergency Management Agency" (FEMA), dated August 22, 2001. Requests for reasonable accommodations will be processed by FEMA, and where appropriate, provided in a prompt, fair and efficient manner.

**2. Action Required.** Holders of FEMA Manual 1430.1, shall file this transmittal sheet in front of the Manual for reference purposes.

**3. Change Lines.** A vertical line in the right or left margins immediately opposite the new or revised material indicates new or revised material appearing on the change page.

#### **Insert**

New Table of Contents

Pages 1-1, 1-2, and 1-3

Pages 2-1

Page 3-1

Page 4-3

Page 5-1, 5-2 and 5-3

Pages 8-1 and 8-2

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/s/

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Joe M. Allbaugh  
Director

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**Appendix A - FEMA Form 14-13, "Request for Reasonable Accommodation"**

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**Appendix C - Department of Defense (DOD) – CAP (Computer Accommodation Program) Accommodation Request Form**

## Chapter 1

### General Information

**1-1. Purpose.** This manual establishes the policy and procedures for the Federal Emergency Management Agency (FEMA) on reasonable accommodation.

**1-2. Applicability and Scope.** The provisions of this manual are applicable to permanent full-time and part-time employees, Cadre On-Call Response (CORE) employees, Disaster Assistance Employees (DAEs), disaster local hires and applicants for any of these positions at FEMA.

**1-3. Policy.** FEMA's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973. Under the law, Federal agencies must provide reasonable accommodations to qualified individuals with disabilities, except in cases where this would cause undue hardship. (See Section 1-8 for definitions of "Qualified Individual With a Disability" and "Undue Hardship.")

**1-4. Procedures.** Requests for reasonable accommodation can be made as follows:

**a.** An employee may request a reasonable accommodation orally or in writing from his/her immediate supervisor or the Disability Program Manager. Any request must be documented on Form 14-13, "Request for Reasonable Accommodation" (Appendix A).

**b.** An applicant for employment may request a reasonable accommodation orally or in writing from any FEMA employee with whom s/he has contact in connection with the application process. Such employee must forward the request to the appropriate decision maker (as delineated in Section 1-7) as soon as possible. An applicant for employment may also request reasonable accommodation from the Disability Program Manager in the Office of Equal Rights. An oral request must be documented on Form 14-13, "Request for Reasonable Accommodation" (Appendix A).

**c.** A family member, health professional, or other representative may request an accommodation on behalf of a FEMA employee or applicant. The request should go to one of the same persons to whom the employee or applicant would make the request.

**1-5. Authority.** Section 501 of the Rehabilitation Act of 1973. Under this law, Federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, except in cases where this would cause undue hardship to the Agency.

**1-6. References.** Title 29, Code of Federal Regulations (CFR) Part 1614.

**1-7. Responsibilities.** The FEMA staff member who first receives the request from an employee must forward it to the individual's first line supervisor who will be the decision maker. The FEMA staff member who first receives the request from an applicant for employment at FEMA Headquarters, one of the regions, or for a CORE or DAE position must forward it to the Deputy Director, Human Resources Division who will be the decision maker. The FEMA staff member who first receives the request from an applicant for employment as a local hire in a disaster must forward it to the FCO or his/her designee who will be the decision maker in conjunction with the Equal Rights Officer servicing that disaster.

**1-8. Definition of Key Terms.**

**a. Reasonable Accommodation:** Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to have employment opportunities equal to those of an individual without a disability. Reasonable accommodations may include:

- (1) Making existing facilities accessible;
- (2) Part-time or modified work schedules;
- (3) Acquiring or modifying equipment; and
- (4) Providing qualified readers or interpreters.

**b. Disability:** A physical or mental impairment that substantially limits a major life activity (i.e., caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working).

**c. Qualified Individual with a Disability:** An individual with a disability is qualified if: (1) he/she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and, (2) he/she can perform the essential functions of the position, with or without reasonable accommodation.

**d. Essential Functions:** Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing them. A function can be "essential" if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or, the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

**e. Undue Hardship:** FEMA must provide reasonable accommodation for a disability unless it would cause significant difficulty or expense. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

**1-9. Forms Prescribed.** This manual prescribes the use of the following forms:

FEMA Form 14-13, "Request for Reasonable Accommodation" (Note: the reverse of this form is "Management Response to Request for Reasonable Accommodation"); FEMA Form 14-13A, "Reasonable Accommodation Information Reporting Form." These FEMA forms, may be obtained through the Agency's Printing, Publications and Graphics Arts Branch, Program Services and Systems Branch, Administration and Resource Planning Directorate or by accessing the FEMA electronic forms website at <http://DocNet.fema.gov>. This manual also prescribes the use of the Department of Defense (CAP) form, which may be obtained from the Office of Equal Rights.

## Chapter 2

### Requests For Reasonable Accommodation

#### **2-1. Reasonable Accommodations.**

- a.** A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application for employment, or in a benefit or privilege of employment, for a reason related to a medical condition. The reasonable accommodation process begins as soon as the request for accommodation is made.
- b.** An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. However, the individual must make the manager aware that he/she has a disability at the time of the request. Special words, such as "*reasonable accommodation*," "*disability*," or "*Rehabilitation Act*" do not necessarily have to be used in making the request.
- c.** For specific procedures, (See 1-4).

#### **2-2. Written Requests.**

- a.** To enable FEMA to keep accurate records regarding requests for accommodation, employees and applicants for employment seeking a reasonable accommodation should follow up an oral request by completing the attached "Request For Reasonable Accommodation" form (Appendix A) and providing it to the decision maker.
- b.** The "Request for Reasonable Accommodations" form should be filled out as soon as possible following an oral request, but it is not a requirement for processing the request itself. FEMA will begin processing the request as soon as it is made, whether or not the form has been filled out. If an employee does not fill out the form, the decision maker on the request should do so.
- c.** The "Request for Reasonable Accommodations" form is not required to be filled out when an individual needs a reasonable accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). The written form is required only for the first request although appropriate notice by the employee must be given each time the accommodation is needed.

## Chapter 3

### Examples of Accommodations:

**3-1. Computer and Electronic Assistive Devices.** FEMA has an interagency agreement with the Department of Defense (DOD), to provide computer and electronic assistive devices to accommodate employees with disabilities. Examples of such accommodations include voice recognition/keyboards, telecommunication devices, training on assistive technology, screen readers/magnification, assistive listening devices, and captioning services. To request such an accommodation the employee must complete DOD's Computer Accommodations Program (CAP) form and have it approved by his/her supervisor and coordinated with the Disability Program Manager in the Office of Equal Rights.

**3-2. Reader or Sign Language Interpreter.** When an employee has a recurring, predictable need for accommodation, such as a reader or sign language interpreter, FEMA may be obligated to provide it, whether or not the employee has requested it. When an employee does make such a request, it can be handled by the employee's immediate supervisor. Readers and sign language interpreters may not always be immediately available. Therefore, supervisors should plan activities requiring such services in advance to ensure their availability. The Deputy Director, Human Resources Division will handle requests from applicants for employment at Headquarters, the regions, and for applicants for employment as CORE and DAE employees. The FCO or his/her designee(s) in conjunction with the Equal Rights Officer at disaster sites will handle requests from applicants for employment for positions as local hires. The Disability Program Manager in the Office of Equal Rights is available to provide technical assistance and information regarding resources for sign language interpreters.

**3-3. Accessible Parking and Materials In Alternative Formats.** Requests from employees for accessible parking and materials in alternative formats can be handled by the employee's immediate supervisor or the Disability Program Manager. The Deputy Director, Human Resources Division will handle requests from applicants for employment at Headquarters, the regions, and for applicants for employment as CORE and DAE employees. The FCO or his/her designee(s) in conjunction with the Equal Rights Officers at disaster sites will handle requests from applicants for employment for positions as local hires.

**3-4. Telework.** Telework is available only to permanent full-time, permanent part-time and CORE employees. Requests for telework as a reasonable accommodation for a disability must be made in accordance with the procedures outlined in the FEMA Manual "Program Guidance for Flexible Workplace Environment" (FEMA Manual 3000.3/July 2000). Such requests must include sufficient medical documentation to substantiate the need for telework. When submitting the "Telework Application Form" to the supervisor, the box for "medical" must be checked under "Application Type."

## Chapter 4

### Interactive Process

**4-1. Interactive Process.** The parties need to discuss the issue to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the FEMA decision maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations.

Communication is a priority throughout the entire process. The FEMA decision maker will have the principal responsibility for identifying possible accommodations. He/she will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. The Disability Program Manager is also available to provide assistance.

**a.** The FEMA decision maker will: (1) explain to the applicant or employee that he/she will be making the decision on the request; and, (2) describe what will happen in the processing of the request. This initial discussion should happen as soon as possible.

**b.** On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided, are clear, extensive discussions are not necessary. Even so, the decision maker and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.

**c.** The decision maker or any other FEMA official who receives information in connection with a request for reasonable accommodation must keep the information confidential. He/she may share information connected with that request with other agency officials only when the agency official(s) need to know the information in order to make a determination on a reasonable accommodation request.

**d.** There are specific considerations in the interactive process when responding to a request for reassignment.

**(1)** Reassignment is a form of reasonable accommodation that must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position he/she holds, with or without reasonable accommodation. Reassignment is a “last resort” accommodation that must be considered if there are no effective accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other possible accommodations would impose undue hardship on the Agency.

(2) Reassignment is available only to employees, not to applicants. In addition, reassignment may be made only to a vacant position. The law does not require that agencies create new positions or move employees from their jobs in order to create a vacancy.

(3) In considering whether there are positions available for reassignment, the Disability Program Manager will work with the Human Resources Division, the offices identifying the vacancies, and the individual requesting the accommodation to identify: (1) vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and, (2) positions which the Human Resources Division has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The agency will first focus on positions that are equivalent to the employee's current job in terms of pay, status and other relevant factors. If there is no vacant equivalent position, FEMA will consider vacant lower level positions for which the individual is qualified.

(4) Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, FEMA will not pay for the employee's relocation costs.

**4-2. Requests for Medical Information.** FEMA is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. In some cases the disability and need for accommodation will be obvious or otherwise already known to the decision maker. In these cases, FEMA will not seek any further medical information. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the decision maker, FEMA may require that the individual provide documentation about the disability and his or her functional limitations. A request for medical documentation may be made to the individual and/or the individual may be asked to obtain information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. The information may include:

- a. The nature, severity, and duration of the individual's impairment;
- b. The activity or activities that the impairment limits;
- c. The extent to which the impairment limits the individual's ability to perform the activity or activities; and/or,
- d. Why the individual requires the particular reasonable accommodation requested, as well as how the accommodation will assist the individual in applying for a job, performing the essential functions of the job, or, enjoying a benefit of the workplace.

(1) If a decision maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, he/she should coordinate such request with the Disability Program Manager in the Office of Equal Rights prior to requesting such information.

(2) When medical documentation is submitted to the decision maker, he/she must provide all such documentation to the Disability Program Manager at the conclusion of the process for record keeping purposes.

e. In order to get the most helpful information possible, all requests for medical documentation should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

f. The individual requesting the accommodation will be asked to sign a limited release of medical information specific to the accommodation requested.

g. If the information provided by the health professional, or by the individual requesting the accommodation, is insufficient to determine whether an accommodation is appropriate, the decision maker may ask for further information.

(1) However, he/she will explain to the individual seeking the accommodation, in specific terms, why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

(2) The individual may then ask the health care, or other appropriate medical professional to provide the missing information. FEMA may submit a list of specific questions for this purpose.

(3) If, after a reasonable period of time there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the decision maker, in consultation with the Disability Program Manager, may request that the individual be examined by a physician chosen by FEMA, at FEMA's expense.

h. In some cases, the individual requesting the accommodation will supply medical information directly to the decision maker without being asked. In these cases, the decision maker will consider such documentation and if additional information is needed, the decision maker will follow the process as set forth in this section. The failure to provide appropriate documentation or to cooperate in the Agency's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

i. Any exceptions to this process will be handled on a case-by-case basis.

**4-3. Confidentiality Requirements.** All requests for reasonable accommodation must be kept confidential. Under Section 501 of the Rehabilitation Act of 1973, medical information obtained by FEMA in connection with the reasonable accommodation process must be kept confidential. This includes medical information about functional limitations and reasonable accommodation needs. Requests for reasonable accommodation must also be kept in files separate from the individual's personnel file. Any FEMA employee who obtains or receives such information is strictly bound by these confidentiality requirements.

**a.** The Disability Program Manager will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act, the requirements of 29 C.F.R. 1611 and this guidance document.

**b.** This information may be disclosed only as follows:

(1) Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the accommodation(s), but medical information should only be disclosed if strictly necessary;

(2) First aid and safety personnel may be informed, when appropriate, should the disabled employee require emergency treatment;

(3) Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act; and,

(4) The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers.

**c.** Whenever medical information is disclosed, the recipient of the information must be informed of the confidentiality requirements.

## Chapter 5

### Time Frames

**5-1. Processing Requests.** FEMA will process requests for reasonable accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. FEMA recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. Time frames for processing requests and providing reasonable accommodation where no supporting information is required are as follows:

- a. Requests from applicants for employment should be expedited when necessary to ensure the applicant's ability to compete for the position. However, these requests should not exceed ten (10) business days.
- b. If a request from an employee is processed by the supervisor, the request should be processed, and the accommodation, if granted, provided within 15 business days from the date of receipt of the request. Requests for accommodation should be expedited when the accommodation is needed to enable the employee to participate in an Agency activity scheduled to occur in the near future.
  - (1) If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision maker will request the information as soon as possible after his or her receipt of the request for accommodation. FEMA recognizes that the need for documentation may not become apparent until after the interactive process has begun.
  - (2) In cases where medical documentation is needed, the accommodation, if granted, will be provided within ten (10) business days for an applicant, and within 15 business days for an employee, from the date the decision maker receives the relevant information, absent any extenuating circumstances.
- c. Where the Disability Program Manager is the decision maker on a request for reasonable accommodation, he/she will make a decision on the request and the accommodation, if granted, will be provided within 15 business days from the date of the request. If medical documentation is necessary, the decision will be made within 15 business days of receipt of the medical information, absent any extenuating circumstances.

**5-2. Extenuating Circumstances.** These are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended on a case-by-case basis. Such extensions may be

granted by the second level supervisor, in the case of a request from an employee, and the Disability Program Manager, in the case of a request from an applicant. It is FEMA's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. FEMA staff is expected to act as quickly as possible in processing and providing accommodations. The following are examples of extenuating circumstances:

- a. There is an outstanding initial or follow-up request for medical information, or the medical information is being evaluated.
- b. The purchase of equipment may take longer than 15 business days because of requirements under the Federal Acquisition Regulation and the processing of requests through the DOD CAP program. Requests for computer and electronic equipment through the DOD CAP program are likely to take an additional 15-20 days.
- c. Equipment is back-ordered, the vendor typically used by FEMA for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- d. The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before FEMA buys it.
- e. New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
- f. "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, FEMA may not delay processing or providing an accommodation because a particular staff member is unavailable.
  - (1) Where extenuating circumstances are present, the decision maker must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes should also be communicated promptly to the individual.
    - a. If there is a delay in providing an accommodation that has been approved, the decision maker must investigate whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the decision maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) they do not interfere with the operations of the Agency; and, (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.

(2) If a delay is attributed to the need to obtain or evaluate medical documentation and FEMA has not yet determined that the individual is entitled to an accommodation, FEMA may provide accommodation on a temporary basis. In this case, the decision maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the request.

(3) FEMA decision makers who approve temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps are being taken to secure a permanent accommodation.

## Chapter 6

### Granting a Reasonable Accommodation Request

**6-1. Granting a Request.** As soon as the decision maker determines that a reasonable accommodation will be provided, the decision should be immediately communicated to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing.

**6-2. Denial of a Request.** In the case of a denial of a request for reasonable accommodation, the decision maker must fill out the “Management Response to Request For Reasonable Accommodation” form on the back of the “Request for Reasonable Accommodation” form (Appendix A) and provide a copy to the individual requesting the accommodation. The denial should clearly state the specific reasons for the denial. Where the decision maker has denied a specific requested accommodation, but offered an alternative accommodation not previously discussed, the denial notice should explain both the reasons for the denial and the reasons that the decision maker believes that the chosen accommodation will be effective. Denial of a request for reasonable accommodation may include the following:

- a. The requested accommodation and the reasons the accommodation would not be effective and why.
- b. The reason the requested accommodation would result in undue hardship to the agency. Before reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that FEMA finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of FEMA’s operations.
- c. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- d. The requested accommodation would require the removal of an essential job function.
- e. The requested accommodation would require the lowering of a performance or production standard. (The decision maker must understand that temporary adjustments, including lowering performance or production standards, are allowed during the normal course of business, if circumstances warrant it. For instance, a supervisor may, if an employee is temporarily but seriously ill, temporarily lower a performance or production standard to accommodate the employee.)

Keep in mind that the actual notice to the individual must include specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship.

The written notice of denial informs the individual that he/she has the right to file an Equal Employment Opportunity (EEO) complaint, and may have the right to pursue Merit Systems Protection Board (MSPB) and union grievance procedures. The notice also explains FEMA's procedures for informal dispute resolution.

**6-3. Dispute Resolution.** Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation.

- a.** If an employee is denied his/her request for reasonable accommodation, he/she may appeal directly to his/her second level supervisor. The employee may present additional information in support of his/her request. The second level supervisor will respond to this request within ten (10) business days.
- b.** If an applicant is denied his/her request for reasonable accommodation, he/she may appeal directly to the Disability Program Manager in the Office of Equal Rights. The applicant may present additional information in support of his/her request. The Disability Program Manager will respond to this request within ten (10) business days.
- c.** In an effort to resolve issues or concerns, employees or applicants can request to participate in the Alternative Dispute Resolution Program.

The pursuit of any of the informal dispute resolution procedures identified above does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures.

## Chapter 7

### Claims

**7-1. Statutory and Collective Bargaining Claims.** This policy is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:

- a. For an EEO complaint, contact an EEO counselor within 45 days from the date of receipt of the written notice of denial;
- b. For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or,
- c. Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3.

If a member of the Office of Equal Rights has had any involvement in the processing of the request for reasonable accommodation, that staff member shall remove him or herself from any involvement in the processing of an EEO counseling contact or EEO complaint in connection with the request.

## Chapter 8

### Assistance Information

**8-1. Tracking and Reporting.** FEMA is required to identify the following information regarding requests for reasonable accommodation:

- a. The number and types of reasonable accommodation that have been requested for each job (occupational series, grade level), by agency component;
- b. Whether those requests have been granted or denied;
- c. How many of those requests relate to the benefits or privileges of employment;
- d. The reasons for denial of requests for reasonable accommodation;
- e. The amount of time taken to process each request for reasonable accommodation; and,
- f. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.
- g. The Disability Program Manager will retain for at least three (3) years information or any cumulative records used to track FEMA's performance with regard to reasonable accommodation.

In accordance with the information tracking requirements, the decision maker must complete the attached "Reasonable Accommodations Information Reporting Form" and submit it to the Disability Program Manager within ten (10) business days of the decision. The decision maker should attach copies of all information, including medical documentation he/she received as part of processing the request.

The Disability Program Manager will maintain records related to an employee's request for accommodation for the duration of the employee's tenure.

**8-2. Inquiries.** Any person wanting further information concerning these procedures may contact the Disability Program Manager in the Office of Equal Rights.

**8-3. Distribution.** These procedures will be distributed to all employees upon issuance. They also will be posted on FEMA's intranet and internet sites. Copies also will be available in the Office of Equal Rights and the Human Resources Division.

**8-4. Resource Assistance.**

- a. Listed below are resources to assist in providing reasonable accommodations:

**(1) Office of Equal Rights, FEMA**

202-646-3535 (Voice); 202-646-2745 (TT)

**(2) U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice); 1-800-800-3302 (TT)

<http://www.eeoc.gov>.

EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act;

EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act.

**(3) Job Accommodation Network (JAN)**

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>.

**(4) ADA Disability and Business Technical Assistance Centers (DBTACs)**

1-800-949-4232 (Voice/TT)

**(5) Registry of Interpreters for the Deaf**

(301) 608-0050 (Voice/TT)

<http://www.rid.org>

**(6) RESNA Technical Assistance Project**

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org/>

**(7) Computer/Electronic Accommodations Program (CAP)**

703-681-8813 (Voice/TT)

[www.tricare.osd.mil/cap](http://www.tricare.osd.mil/cap)



# FEDERAL EMERGENCY MANAGEMENT AGENCY

## **MANUAL**

Date

Number

December 3, 2002

1430.1 Chg. 1

ER

### **Reasonable Accommodation for the Federal Emergency Management Agency**

#### **Foreword**

**1. Purpose.** This transmits changes to FEMA Manual 1430.1, “Reasonable Accommodation for the Federal Emergency Management Agency” (FEMA), dated August 22, 2001. Requests for reasonable accommodations will be processed by FEMA, and where appropriate, provided in a prompt, fair and efficient manner.

**2. Action Required.** Holders of FEMA Manual 1430.1, shall file this transmittal sheet in front of the Manual for reference purposes.

**3. Change Lines.** A vertical line in the right or left margins immediately opposite the new or revised material indicates new or revised material appearing on the change page.

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/s/

Joe M. Allbaugh  
Director

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**Appendix A - FEMA Form 14-13, "Request for Reasonable Accommodation"**

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**Appendix C - Department of Defense (DOD) – CAP (Computer Accommodation Program) Accommodation Request Form**

## Chapter 1

### General Information

**1-1. Purpose.** This manual establishes the policy and procedures for the Federal Emergency Management Agency (FEMA) on reasonable accommodation.

**1-2. Applicability and Scope.** The provisions of this manual are applicable to permanent full-time and part-time employees, Cadre On-Call Response (CORE) employees, Disaster Assistance Employees (DAEs), disaster local hires and applicants for any of these positions at FEMA.

**1-3. Policy.** FEMA's policy is to fully comply with the reasonable accommodation requirements of the Rehabilitation Act of 1973. Under the law, Federal agencies must provide reasonable accommodations to qualified individuals with disabilities, except in cases where this would cause undue hardship. (See Section 1-8 for definitions of "Qualified Individual With a Disability" and "Undue Hardship.")

**1-4. Procedures.** Requests for reasonable accommodation can be made as follows:

**a.** An employee may request a reasonable accommodation orally or in writing from his/her immediate supervisor or the Disability Program Manager. Any request must be documented on Form 14-13, "Request for Reasonable Accommodation" (Appendix A).

**b.** An applicant for employment may request a reasonable accommodation orally or in writing from any FEMA employee with whom s/he has contact in connection with the application process. Such employee must forward the request to the appropriate decision maker (as delineated in Section 1-7) as soon as possible. An applicant for employment may also request reasonable accommodation from the Disability Program Manager in the Office of Equal Rights. An oral request must be documented on Form 14-13, "Request for Reasonable Accommodation" (Appendix A).

**c.** A family member, health professional, or other representative may request an accommodation on behalf of a FEMA employee or applicant. The request should go to one of the same persons to whom the employee or applicant would make the request.

**1-5. Authority.** Section 501 of the Rehabilitation Act of 1973. Under this law, Federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, except in cases where this would cause undue hardship to the Agency.

**1-6. References.** Title 29, Code of Federal Regulations (CFR) Part 1614.

**1-7. Responsibilities.** The FEMA staff member who first receives the request from an employee must forward it to the individual's first line supervisor who will be the decision maker. The FEMA staff member who first receives the request from an applicant for employment at FEMA Headquarters, one of the regions, or for a CORE or DAE position must forward it to the Deputy Director, Human Resources Division who will be the decision maker. The FEMA staff member who first receives the request from an applicant for employment as a local hire in a disaster must forward it to the FCO or his/her designee who will be the decision maker in conjunction with the Equal Rights Officer servicing that disaster.

**1-8. Definition of Key Terms.**

**a. Reasonable Accommodation:** Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to have employment opportunities equal to those of an individual without a disability. Reasonable accommodations may include:

- (1) Making existing facilities accessible;
- (2) Part-time or modified work schedules;
- (3) Acquiring or modifying equipment; and
- (4) Providing qualified readers or interpreters.

**b. Disability:** A physical or mental impairment that substantially limits a major life activity (i.e., caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working).

**c. Qualified Individual with a Disability:** An individual with a disability is qualified if: (1) he/she satisfies the requisite skill, experience, education, and other job-related requirements of the position; and, (2) he/she can perform the essential functions of the position, with or without reasonable accommodation.

**d. Essential Functions:** Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing them. A function can be "essential" if, among other things, the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or, the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

**e. Undue Hardship:** FEMA must provide reasonable accommodation for a disability unless it would cause significant difficulty or expense. Determination of undue hardship is always made on a case-by-case basis, considering factors that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the operations of the agency.

**1-9. Forms Prescribed.** This manual prescribes the use of the following forms:

FEMA Form 14-13, "Request for Reasonable Accommodation" (Note: the reverse of this form is "Management Response to Request for Reasonable Accommodation"); FEMA Form 14-13A, "Reasonable Accommodation Information Reporting Form." These FEMA forms, may be obtained through the Agency's Printing, Publications and Graphics Arts Branch, Program Services and Systems Branch, Administration and Resource Planning Directorate or by accessing the FEMA electronic forms website at <http://DocNet.fema.gov>. This manual also prescribes the use of the Department of Defense (CAP) form, which may be obtained from the Office of Equal Rights.

## Chapter 2

### Requests For Reasonable Accommodation

#### **2-1. Reasonable Accommodations.**

- a.** A request for reasonable accommodation is a statement that an individual needs an adjustment or change at work, in the application for employment, or in a benefit or privilege of employment, for a reason related to a medical condition. The reasonable accommodation process begins as soon as the request for accommodation is made.
- b.** An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. However, the individual must make the manager aware that he/she has a disability at the time of the request. Special words, such as "*reasonable accommodation*," "*disability*," or "*Rehabilitation Act*" do not necessarily have to be used in making the request.
- c.** For specific procedures, (See 1-4).

#### **2-2. Written Requests.**

- a.** To enable FEMA to keep accurate records regarding requests for accommodation, employees and applicants for employment seeking a reasonable accommodation should follow up an oral request by completing the attached "Request For Reasonable Accommodation" form (Appendix A) and providing it to the decision maker.
- b.** The "Request for Reasonable Accommodations" form should be filled out as soon as possible following an oral request, but it is not a requirement for processing the request itself. FEMA will begin processing the request as soon as it is made, whether or not the form has been filled out. If an employee does not fill out the form, the decision maker on the request should do so.
- c.** The "Request for Reasonable Accommodations" form is not required to be filled out when an individual needs a reasonable accommodation on a repeated basis (e.g., the assistance of sign language interpreters or readers). The written form is required only for the first request although appropriate notice by the employee must be given each time the accommodation is needed.

## Chapter 3

### Examples of Accommodations:

**3-1. Computer and Electronic Assistive Devices.** FEMA has an interagency agreement with the Department of Defense (DOD), to provide computer and electronic assistive devices to accommodate employees with disabilities. Examples of such accommodations include voice recognition/keyboards, telecommunication devices, training on assistive technology, screen readers/magnification, assistive listening devices, and captioning services. To request such an accommodation the employee must complete DOD's Computer Accommodations Program (CAP) form and have it approved by his/her supervisor and coordinated with the Disability Program Manager in the Office of Equal Rights.

**3-2. Reader or Sign Language Interpreter.** When an employee has a recurring, predictable need for accommodation, such as a reader or sign language interpreter, FEMA may be obligated to provide it, whether or not the employee has requested it. When an employee does make such a request, it can be handled by the employee's immediate supervisor. Readers and sign language interpreters may not always be immediately available. Therefore, supervisors should plan activities requiring such services in advance to ensure their availability. The Deputy Director, Human Resources Division will handle requests from applicants for employment at Headquarters, the regions, and for applicants for employment as CORE and DAE employees. The FCO or his/her designee(s) in conjunction with the Equal Rights Officer at disaster sites will handle requests from applicants for employment for positions as local hires. The Disability Program Manager in the Office of Equal Rights is available to provide technical assistance and information regarding resources for sign language interpreters.

**3-3. Accessible Parking and Materials In Alternative Formats.** Requests from employees for accessible parking and materials in alternative formats can be handled by the employee's immediate supervisor or the Disability Program Manager. The Deputy Director, Human Resources Division will handle requests from applicants for employment at Headquarters, the regions, and for applicants for employment as CORE and DAE employees. The FCO or his/her designee(s) in conjunction with the Equal Rights Officers at disaster sites will handle requests from applicants for employment for positions as local hires.

**3-4. Telework.** Telework is available only to permanent full-time, permanent part-time and CORE employees. Requests for telework as a reasonable accommodation for a disability must be made in accordance with the procedures outlined in the FEMA Manual "Program Guidance for Flexible Workplace Environment" (FEMA Manual 3000.3/July 2000). Such requests must include sufficient medical documentation to substantiate the need for telework. When submitting the "Telework Application Form" to the supervisor, the box for "medical" must be checked under "Application Type."

## Chapter 4

### Interactive Process

**4-1. Interactive Process.** The parties need to discuss the issue to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the FEMA decision maker must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations.

Communication is a priority throughout the entire process. The FEMA decision maker will have the principal responsibility for identifying possible accommodations. He/she will take a proactive approach in searching out and considering possible accommodations, including consulting appropriate resources for assistance. The employee requesting the accommodation should also participate to the extent possible in helping to identify an effective accommodation. The Disability Program Manager is also available to provide assistance.

**a.** The FEMA decision maker will: (1) explain to the applicant or employee that he/she will be making the decision on the request; and, (2) describe what will happen in the processing of the request. This initial discussion should happen as soon as possible.

**b.** On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation that should be provided, are clear, extensive discussions are not necessary. Even so, the decision maker and requesting individual should talk to each other to make sure that there is a full exchange of relevant information.

**c.** The decision maker or any other FEMA official who receives information in connection with a request for reasonable accommodation must keep the information confidential. He/she may share information connected with that request with other agency officials only when the agency official(s) need to know the information in order to make a determination on a reasonable accommodation request.

**d.** There are specific considerations in the interactive process when responding to a request for reassignment.

**(1)** Reassignment is a form of reasonable accommodation that must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position he/she holds, with or without reasonable accommodation. Reassignment is a “last resort” accommodation that must be considered if there are no effective accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other possible accommodations would impose undue hardship on the Agency.

(2) Reassignment is available only to employees, not to applicants. In addition, reassignment may be made only to a vacant position. The law does not require that agencies create new positions or move employees from their jobs in order to create a vacancy.

(3) In considering whether there are positions available for reassignment, the Disability Program Manager will work with the Human Resources Division, the offices identifying the vacancies, and the individual requesting the accommodation to identify: (1) vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and, (2) positions which the Human Resources Division has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The agency will first focus on positions that are equivalent to the employee's current job in terms of pay, status and other relevant factors. If there is no vacant equivalent position, FEMA will consider vacant lower level positions for which the individual is qualified.

(4) Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, FEMA will not pay for the employee's relocation costs.

**4-2. Requests for Medical Information.** FEMA is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. In some cases the disability and need for accommodation will be obvious or otherwise already known to the decision maker. In these cases, FEMA will not seek any further medical information. However, when a disability and/or need for reasonable accommodation is not obvious or otherwise already known to the decision maker, FEMA may require that the individual provide documentation about the disability and his or her functional limitations. A request for medical documentation may be made to the individual and/or the individual may be asked to obtain information from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor. The information may include:

- a. The nature, severity, and duration of the individual's impairment;
- b. The activity or activities that the impairment limits;
- c. The extent to which the impairment limits the individual's ability to perform the activity or activities; and/or,
- d. Why the individual requires the particular reasonable accommodation requested, as well as how the accommodation will assist the individual in applying for a job, performing the essential functions of the job, or, enjoying a benefit of the workplace.

(1) If a decision maker believes that medical information is necessary in order to evaluate a request for reasonable accommodation, he/she should coordinate such request with the Disability Program Manager in the Office of Equal Rights prior to requesting such information.

(2) When medical documentation is submitted to the decision maker, he/she must provide all such documentation to the Disability Program Manager at the conclusion of the process for record keeping purposes.

e. In order to get the most helpful information possible, all requests for medical documentation should describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information.

f. The individual requesting the accommodation will be asked to sign a limited release of medical information specific to the accommodation requested.

g. If the information provided by the health professional, or by the individual requesting the accommodation, is insufficient to determine whether an accommodation is appropriate, the decision maker may ask for further information.

(1) However, he/she will explain to the individual seeking the accommodation, in specific terms, why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.

(2) The individual may then ask the health care, or other appropriate medical professional to provide the missing information. FEMA may submit a list of specific questions for this purpose.

(3) If, after a reasonable period of time there is still not sufficient information to demonstrate that the individual has a disability and needs a reasonable accommodation, the decision maker, in consultation with the Disability Program Manager, may request that the individual be examined by a physician chosen by FEMA, at FEMA's expense.

h. In some cases, the individual requesting the accommodation will supply medical information directly to the decision maker without being asked. In these cases, the decision maker will consider such documentation and if additional information is needed, the decision maker will follow the process as set forth in this section. The failure to provide appropriate documentation or to cooperate in the Agency's efforts to obtain such documentation can result in a denial of the reasonable accommodation.

i. Any exceptions to this process will be handled on a case-by-case basis.

**4-3. Confidentiality Requirements.** All requests for reasonable accommodation must be kept confidential. Under Section 501 of the Rehabilitation Act of 1973, medical information obtained by FEMA in connection with the reasonable accommodation process must be kept confidential. This includes medical information about functional limitations and reasonable accommodation needs. Requests for reasonable accommodation must also be kept in files separate from the individual's personnel file. Any FEMA employee who obtains or receives such information is strictly bound by these confidentiality requirements.

**a.** The Disability Program Manager will maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act, the requirements of 29 C.F.R. 1611 and this guidance document.

**b.** This information may be disclosed only as follows:

(1) Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the accommodation(s), but medical information should only be disclosed if strictly necessary;

(2) First aid and safety personnel may be informed, when appropriate, should the disabled employee require emergency treatment;

(3) Government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act; and,

(4) The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers.

**c.** Whenever medical information is disclosed, the recipient of the information must be informed of the confidentiality requirements.

## Chapter 5

### Time Frames

**5-1. Processing Requests.** FEMA will process requests for reasonable accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. FEMA recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. Time frames for processing requests and providing reasonable accommodation where no supporting information is required are as follows:

- a. Requests from applicants for employment should be expedited when necessary to ensure the applicant's ability to compete for the position. However, these requests should not exceed ten (10) business days.
- b. If a request from an employee is processed by the supervisor, the request should be processed, and the accommodation, if granted, provided within 15 business days from the date of receipt of the request. Requests for accommodation should be expedited when the accommodation is needed to enable the employee to participate in an Agency activity scheduled to occur in the near future.
  - (1) If the decision maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision maker will request the information as soon as possible after his or her receipt of the request for accommodation. FEMA recognizes that the need for documentation may not become apparent until after the interactive process has begun.
  - (2) In cases where medical documentation is needed, the accommodation, if granted, will be provided within ten (10) business days for an applicant, and within 15 business days for an employee, from the date the decision maker receives the relevant information, absent any extenuating circumstances.
- c. Where the Disability Program Manager is the decision maker on a request for reasonable accommodation, he/she will make a decision on the request and the accommodation, if granted, will be provided within 15 business days from the date of the request. If medical documentation is necessary, the decision will be made within 15 business days of receipt of the medical information, absent any extenuating circumstances.

**5-2. Extenuating Circumstances.** These are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended on a case-by-case basis. Such extensions may be

granted by the second level supervisor, in the case of a request from an employee, and the Disability Program Manager, in the case of a request from an applicant. It is FEMA's policy that extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. FEMA staff is expected to act as quickly as possible in processing and providing accommodations. The following are examples of extenuating circumstances:

- a. There is an outstanding initial or follow-up request for medical information, or the medical information is being evaluated.
- b. The purchase of equipment may take longer than 15 business days because of requirements under the Federal Acquisition Regulation and the processing of requests through the DOD CAP program. Requests for computer and electronic equipment through the DOD CAP program are likely to take an additional 15-20 days.
- c. Equipment is back-ordered, the vendor typically used by FEMA for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services and another vendor is not immediately available.
- d. The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before FEMA buys it.
- e. New staff needs to be hired or contracted for, or an accommodation involves the removal of architectural barriers.
- f. "Extenuating circumstances" covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, FEMA may not delay processing or providing an accommodation because a particular staff member is unavailable.
  - (1) Where extenuating circumstances are present, the decision maker must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes should also be communicated promptly to the individual.
    - a. If there is a delay in providing an accommodation that has been approved, the decision maker must investigate whether temporary measures can be taken to assist the employee. This could include providing the requested accommodation on a temporary basis or providing a less effective form of accommodation. In addition, the decision maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) they do not interfere with the operations of the Agency; and, (2) the employee is clearly informed that they are being provided only on a temporary, interim basis.

(2) If a delay is attributed to the need to obtain or evaluate medical documentation and FEMA has not yet determined that the individual is entitled to an accommodation, FEMA may provide accommodation on a temporary basis. In this case, the decision maker will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision on the request.

(3) FEMA decision makers who approve temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps are being taken to secure a permanent accommodation.

## Chapter 6

### Granting a Reasonable Accommodation Request

**6-1. Granting a Request.** As soon as the decision maker determines that a reasonable accommodation will be provided, the decision should be immediately communicated to the individual. If the accommodation cannot be provided immediately, the decision maker must inform the individual of the projected time frame for providing the accommodation. This notice does not need to be in writing.

**6-2. Denial of a Request.** In the case of a denial of a request for reasonable accommodation, the decision maker must fill out the “Management Response to Request For Reasonable Accommodation” form on the back of the “Request for Reasonable Accommodation” form (Appendix A) and provide a copy to the individual requesting the accommodation. The denial should clearly state the specific reasons for the denial. Where the decision maker has denied a specific requested accommodation, but offered an alternative accommodation not previously discussed, the denial notice should explain both the reasons for the denial and the reasons that the decision maker believes that the chosen accommodation will be effective. Denial of a request for reasonable accommodation may include the following:

- a. The requested accommodation and the reasons the accommodation would not be effective and why.
- b. The reason the requested accommodation would result in undue hardship to the agency. Before reaching this determination, the decision maker must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided. A determination of undue hardship means that FEMA finds that a specific accommodation would result in significant difficulty or expense, or would fundamentally alter the nature of FEMA’s operations.
- c. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
- d. The requested accommodation would require the removal of an essential job function.
- e. The requested accommodation would require the lowering of a performance or production standard. (The decision maker must understand that temporary adjustments, including lowering performance or production standards, are allowed during the normal course of business, if circumstances warrant it. For instance, a supervisor may, if an employee is temporarily but seriously ill, temporarily lower a performance or production standard to accommodate the employee.)

Keep in mind that the actual notice to the individual must include specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship.

The written notice of denial informs the individual that he/she has the right to file an Equal Employment Opportunity (EEO) complaint, and may have the right to pursue Merit Systems Protection Board (MSPB) and union grievance procedures. The notice also explains FEMA's procedures for informal dispute resolution.

**6-3. Dispute Resolution.** Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation.

- a.** If an employee is denied his/her request for reasonable accommodation, he/she may appeal directly to his/her second level supervisor. The employee may present additional information in support of his/her request. The second level supervisor will respond to this request within ten (10) business days.
- b.** If an applicant is denied his/her request for reasonable accommodation, he/she may appeal directly to the Disability Program Manager in the Office of Equal Rights. The applicant may present additional information in support of his/her request. The Disability Program Manager will respond to this request within ten (10) business days.
- c.** In an effort to resolve issues or concerns, employees or applicants can request to participate in the Alternative Dispute Resolution Program.

The pursuit of any of the informal dispute resolution procedures identified above does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, MSPB, or union grievance procedures.

## Chapter 7

### Claims

**7-1. Statutory and Collective Bargaining Claims.** This policy is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, remain unchanged.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:

- a. For an EEO complaint, contact an EEO counselor within 45 days from the date of receipt of the written notice of denial;
- b. For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or,
- c. Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3.

If a member of the Office of Equal Rights has had any involvement in the processing of the request for reasonable accommodation, that staff member shall remove him or herself from any involvement in the processing of an EEO counseling contact or EEO complaint in connection with the request.

## Chapter 8

### Assistance Information

**8-1. Tracking and Reporting.** FEMA is required to identify the following information regarding requests for reasonable accommodation:

- a. The number and types of reasonable accommodation that have been requested for each job (occupational series, grade level), by agency component;
- b. Whether those requests have been granted or denied;
- c. How many of those requests relate to the benefits or privileges of employment;
- d. The reasons for denial of requests for reasonable accommodation;
- e. The amount of time taken to process each request for reasonable accommodation; and,
- f. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.
- g. The Disability Program Manager will retain for at least three (3) years information or any cumulative records used to track FEMA's performance with regard to reasonable accommodation.

In accordance with the information tracking requirements, the decision maker must complete the attached "Reasonable Accommodations Information Reporting Form" and submit it to the Disability Program Manager within ten (10) business days of the decision. The decision maker should attach copies of all information, including medical documentation he/she received as part of processing the request.

The Disability Program Manager will maintain records related to an employee's request for accommodation for the duration of the employee's tenure.

**8-2. Inquiries.** Any person wanting further information concerning these procedures may contact the Disability Program Manager in the Office of Equal Rights.

**8-3. Distribution.** These procedures will be distributed to all employees upon issuance. They also will be posted on FEMA's intranet and internet sites. Copies also will be available in the Office of Equal Rights and the Human Resources Division.

**8-4. Resource Assistance.**

- a. Listed below are resources to assist in providing reasonable accommodations:

**(1) Office of Equal Rights, FEMA**

202-646-3535 (Voice); 202-646-2745 (TT)

**(2) U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice); 1-800-800-3302 (TT)

<http://www.eeoc.gov>.

EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act;

EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act.

**(3) Job Accommodation Network (JAN)**

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>.

**(4) ADA Disability and Business Technical Assistance Centers (DBTACs)**

1-800-949-4232 (Voice/TT)

**(5) Registry of Interpreters for the Deaf**

(301) 608-0050 (Voice/TT)

<http://www.rid.org>

**(6) RESNA Technical Assistance Project**

(703) 524-6686 (Voice) (703) 524-6639 (TT)

<http://www.resna.org/>

**(7) Computer/Electronic Accommodations Program (CAP)**

703-681-8813 (Voice/TT)

[www.tricare.osd.mil/cap](http://www.tricare.osd.mil/cap)



# Guide to Telework in the Federal Government

April 2011

*a New Day for Federal Service*

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## **INTRODUCTION AND BACKGROUND**

### **Introduction**

The Federal Government is a leader in the use of innovative workplace flexibilities, including telework. In March 2010, President Obama hosted a [White House Forum](#) on flexibilities, emphasizing their vital role in recruiting and retaining the best and brightest workers and maximizing their effectiveness. Congress passed the Telework Enhancement Act of 2010 to catalyze expansion.

Federal telework programs are established primarily to meet agency mission and operational needs. Telework saves money by helping government reduce real estate and energy costs and promote management efficiencies; makes us more resilient in severe weather and other emergencies; improves the quality of employee work-life; and increases employment opportunities for persons with disabilities.

Advances in information technology have paved the way for increased telework. However, telework is not a new concept and is not necessarily dependent on the use of technology. The key is for managers and employees to clearly define the work expectations and objectives, and then to give employees the tools and flexibility needed to get the job done.

This *Guide to Telework in the Federal Government* outlines practical information to assist Federal agencies, managers, supervisors, Telework Managing Officers<sup>1</sup>, other staff responsible for implementing telework, and employees. Perhaps you are an employee who would like to know more about telework. Maybe you manage or supervise teleworking staff and hope to develop a better understanding of the day-to-day aspects of this important flexibility. You may be a Telework Managing Officer or another staff member tasked with oversight or operational responsibilities related to the telework program at your agency. Perhaps you are a labor representative with a need to know the finer points of a great telework program. If any of these describe your situation, then this *Guide* is for you.

### **Legislative Background**

For many years, laws addressing telework (under various names – “work at home,” “flexible work,” “telecommuting,” etc.) have been in effect for Federal employees. The initial legislative mandate for telework was established in 2000 ([§ 359 of Public Law 106-346](#)). This law states that “[e]ach executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance.” Associated language in the conference report for this legislation expanded on that requirement where it said that “[e]ach agency participating in the program shall develop criteria to be used in implementing such a policy and ensure that managerial, logistical, organizational, or other barriers to full implementation and successful functioning of the policy are removed. Each agency should also provide for adequate administrative, human resources, technical, and logistical support for carrying out the policy.”

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<sup>1</sup> A senior-level official at each agency responsible and accountable for policy development and implementation related to the agency’s telework program.

Further legislation ([Public Law 108-199, Division B, § 627](#) of January 23, 2004, and [Public Law 108-447, Division B, § 622](#) of December 8, 2004) followed this mandate with directives to certain agencies to increase telework participation in the workforce by specified amounts.

In response to the original congressional mandate, the Office of Personnel Management (OPM) began to survey Federal agencies about telework in 2000. By means of the annual “Call for Telework Data,” OPM collaborates with Federal agencies to collect information about individual agency telework programs, including participation rates. The analysis of that data is presented in the yearly [Status of Telework in the Federal Government Report to the Congress](#), published annually since 2002. You may review these reports for historical and background information on Federal telework at the central website at [www.telework.gov](http://www.telework.gov).

[The Telework Enhancement Act of 2010](#) (the Act), was signed into law on December 9, 2010. The passage and signing of this legislation (Public Law 111-292) was a significant milestone in the history of Federal telework. The Act is a key factor in the Federal Government’s ability to achieve greater flexibility in managing its workforce through the use of telework. The law specifies roles, responsibilities and expectations for all Federal executive agencies with regard to telework policies; employee eligibility and participation; program implementation; and reporting. It also assigns specific duties to OPM; General Services Administration (GSA); Office of Management and Budget (OMB); Department of Homeland Security (DHS), including the Federal Emergency Management Agency (FEMA); National Archives and Records Administration (NARA); and others. The specific agencies named in the Act are charged with directing overall policy and providing policy guidance to Federal executive agencies on an ongoing basis. The Act established baseline expectations for the Federal telework program and agencies have been diligent to implement its requirements seamlessly and effectively.

## **What is Telework?**

### **Definition**

The official definition of “telework” can be found in the Telework Enhancement Act of 2010 (the Act): “[t]he term 'telework' or 'teleworking' refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.”

In practice, “telework” is a work arrangement that allows an employee to perform work, during any part of regular, paid hours, at an approved alternative worksite (e.g., home, telework center). This definition of telework includes what is generally referred to as remote work but does not include any part of work done while on official travel or mobile work.

**REMOTE:** In the past, agencies have sometimes used this term to describe a work arrangement in which the employee resides and works at a location beyond the local commuting area of the employing organization's worksite or to describe a full-time telework arrangement. For reporting purposes, these employees should be included as teleworkers.

**MOBILE:** Work which is characterized by routine and regular travel to conduct work in customer or other worksites as opposed to a single authorized alternative worksite. Examples of mobile work include site audits, site inspections, investigations, property management, and work performed while commuting, traveling between worksites, or on Temporary Duty (TDY).

You may also be familiar with the terms “telecommuting” and “flexible workplace” and both are sometimes used to describe what we now generally refer to as “telework.” While “remote” and “mobile” work are also terms that are sometimes used as synonyms for telework, they tend to operate differently than telework as is apparent in the detailed operational definition.

For consistency, OPM recommends that all agencies use the term “telework” for reporting purposes and for all other activities related to policy and legislation, as defined in the Act.

### **Types of Telework Arrangements**

Generally speaking, there are two types of telework; 1) routine telework in which telework occurs as part of an ongoing, regular schedule and 2) situational telework that is approved on a case-by-case basis, where the hours worked were NOT part of a previously approved, ongoing and regular telework schedule. Examples of situational telework include telework as a result of inclement weather, doctor appointment, or special work assignments, and is sometimes also referred to as situational, episodic, intermittent, unscheduled, or ad-hoc telework. It is important to note that **any employee who wishes to telework** (regardless of which type) **must first successfully complete an interactive telework training program** provided by the agency and **must enter into a written agreement with his/her supervisor**. OPM recommends that supervisors and managers of teleworking employees complete telework training.

When one typically refers to a "teleworker," the picture that most often comes to mind is the first type described above, i.e., someone who is approved to telework on a schedule that is regular and recurring, most often on an agreed-upon day or days during a bi-weekly pay period (e.g., someone teleworks "every Wednesday" or "every Tuesday and Thursday"). The specific days that are regularly scheduled for telework are spelled out in a written telework agreement between the employee and that employee's supervisor.

There are many different scenarios in which an employee can be approved for telework under the second type described above, i.e., situational, episodic, or ad-hoc. Since every employee that is eligible to telework has formally received training and entered into a written telework agreement, these employees may be approved by their supervisors to telework on a case-by-case basis as the need arises. Examples include but are not limited to the following: 1) an employee has a short-term need for uninterrupted time to complete work on a complex project or report; 2) an employee is recovering from illness or an injury and is temporarily unable to physically report to the traditional office; and 3) an employee receives word of an OPM announcement on the status of Federal Government operations in the Washington, DC, area due to inclement weather as "Open with Option for Unscheduled Leave or Unscheduled Telework," and notifies her/his supervisor that s/he would like to opt for unscheduled telework that day.

Note that by definition, "unscheduled telework" is a specific form of situational or ad-hoc telework. Agencies and employees are encouraged to consult the OPM publication, [Washington, DC, Area Dismissal and Closure Procedures](#), for answers to questions about "unscheduled telework" during dismissal or closure situations.

Telework arrangements in the Federal Government may be full-time or part-time. Part-time schedules are more common. As with most aspects of the telework program, Federal agencies have discretion to define the types of arrangements and parameters for participation within their telework policies and telework agreements. In exercising this discretion, agencies should consider individual employee needs while ensuring that telework does not diminish employee performance or agency operations. There is more guidance on policies and agreements later in this document.

While some agencies do allow full-time telework, it is not the norm. In fact, the Act specifically identifies the following categories of part-time participation and requires that agencies report on the specific number of employees each year that telework:

- 3 or more days per pay period (denotes a bi-weekly pay period)
- 1 or 2 days per pay period
- once per month
- on an occasional, episodic, or short-term basis (i.e., situational telework such as ad-hoc or unscheduled telework as described above).

# TELEWORK GUIDANCE BY AUDIENCE

## Federal Agencies/Telework Managing Officers

This segment provides guidance to Federal agencies regarding their responsibilities under the Act to establish and implement telework programs. By extension, it offers practical information to the agency's designated Telework Managing Officer (TMO), by law each agency's primary point of contact to OPM on telework matters.

### Telework Fundamentals

Federal law regarding telework applies to **all employees of Federal executive agencies** (agencies). Subject to the limitations described in the law and as defined by individual agency telework policies and applicable collective bargaining agreements, employees may participate in telework regardless of the geographic location where they work (i.e., domestic or overseas).

It is important to understand that **telework is not an employee right**, i.e., Federal law requires agencies to establish telework programs but does not give individual employees a legal right to telework. Also, **telework may not be used as a substitute for dependent care**. That being said, it is clear that the intent of the laws on telework is to encourage agencies to allow employee participation in the telework program to the maximum extent possible without diminished employee performance. Agencies should keep this in mind when developing telework policies and agreements, and when considering formal requests from employees to telework. The Act recognized this intent when it required agencies by June 7, 2011 (i.e., 180 days from enactment of the law) to "establish a policy under which eligible employees of the agency may be authorized to telework;" to "determine the eligibility for all employees of the agency to participate in telework;" and to "notify all employees of the agency of their eligibility to telework."

Another important factor to remember is that **employee participation in telework is voluntary**.<sup>2</sup> The Act does not mandate telework or promote telework for its own sake. Instead, it asks agencies to implement telework as a workplace flexibility that assists the agency to maintain continuity of operations and reduce management costs while also improving Federal employees' ability to balance their work and life commitments. The Act encourages an increase in the use of telework, but only for employees who choose to do so. This means that an agency may not compel an employee to telework, even if the duties of the position make that employee "telework eligible."

In the final analysis, **telework is primarily an arrangement established to facilitate the accomplishment of work**. While employees and agencies alike enjoy positive outcomes resulting from telework, agencies retain both the discretion and the obligation to determine employee eligibility for telework subject to business-related, operational needs and the limitations described in the Act.

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<sup>2</sup> Although entering into the telework arrangement is voluntary, once the employee is under such an arrangement, he or she may be required to telework outside of his or her normal telework schedule in the case of a temporary emergency situation if that understanding has been clearly communicated by the agency to the teleworking employee in the written telework agreement (see the appropriate section below).

## **Agency Roles and Responsibilities**

Of all the legislation to date, the Act provides the most comprehensive view of what is expected of Federal agencies with regard to telework. All Federal executive agencies are responsible to fulfill several requirements identified in the Act. Several specific agencies have additional duties to provide oversight, guidance and overall support with the implementation of telework programs.

❖ **Every Federal Executive agency will:**

- establish a policy under which eligible employees may be authorized to telework
- determine employee eligibility to participate in telework
- notify all employees of their eligibility to telework
- incorporate telework into Continuity of Operations (COOP) plans
- ensure that each eligible employee authorized to telework enters into a written telework agreement with his/her supervisor
- ensure that an interactive telework training program is provided to eligible employees and their managers and that the program is successfully completed by employees prior to entering into a written telework agreement
- designate a TMO to serve as the primary point of contact with OPM on telework matters on behalf of the agency
- while developing telework policies, consult with OPM as needed for policy guidance in various areas such as performance management, pay and leave, recruitment and retention, etc.

When fulfilling the requirements of the Act, Federal agencies will:

- allow pre-decisional involvement on development of telework policies with employee representatives to the fullest extent practicable as provided in Executive Order 13522
- ensure that appropriate collective bargaining obligations are satisfied with employee representatives on agency telework policies.

The Act required agencies to fulfill specific provisions of the law no later than 180 days from enactment (June 7, 2011). Other requirements are ongoing as new employees come on board and policies and agreements are routinely reviewed and modified over time.

❖ **OPM shall:**

- provide consultation, policy and policy guidance to the agencies on telework in the areas of pay and leave; agency closure; performance management; official worksite; recruitment and retention; and accommodations for persons with disabilities
- assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals

- consult with the **General Services Administration (GSA)** on policy and policy guidance for telework in the areas of telework centers, travel, technology, equipment and dependent care
- consult with the **Federal Emergency Management Agency (FEMA)** on policy and policy guidance for telework in the areas of continuation of operations and long-term emergencies
- consult with the **National Archives and Records Administration (NARA)** on policy and policy guidance for telework in the areas of efficient and effective records management; and preservation of records, including Presidential and Vice-Presidential records.

OPM is also responsible for maintaining a central telework website that includes telework links, announcements, and guidance developed by OPM or submitted by FEMA and GSA (OPM is required to post FEMA and GSA guidance no later than 10 business days from receiving it). This central website may be accessed at [www.telework.gov](http://www.telework.gov). OPM and GSA have traditionally worked together to support telework in the Federal Government. The website at [www.telework.gov](http://www.telework.gov) is the result of an ongoing collaboration, between OPM and GSA, to provide timely and practical information to agencies, managers, employees and other interested parties to effectively implement telework programs and arrangements, as well as information of interest to the general public. OPM and GSA also work directly with TMOs at each agency to provide guidance and assistance as needed.

OPM, in collaboration with each agency, is required to compile and submit an annual report on the telework programs of each agency, beginning with the first report submitted 18 months after enactment of the law (June 2012), and on a yearly basis thereafter. The initial report after the law's enactment will establish the new baseline for the annual *[Status of Telework in the Federal Government Report to the Congress](#)*. OPM is also tasked with researching the utilization of telework by public and private sector entities that identify best practices and recommendations for the Federal government. Finally, the law directed OPM to review the outcomes associated with an increase in telework, including the effects of telework on energy consumption, job creation and availability, urban transportation patterns, and the ability to anticipate the dispersal of work during periods of emergency, and to make findings available to the public.

❖ **OMB** is required to:

- consult with the **Department of Homeland Security (DHS)** and the **National Institute of Standards and Technology (NIST)**, to issue guidelines to ensure the adequacy of information and security protections for information and information systems used while teleworking (with guidelines to be completed by June 7, 2011 - 180 days from enactment of the law)
- issue policy guidance requiring each agency, when purchasing computer systems, to purchase systems that enable and support telework, unless the agency head determines that there is a mission-specific reason not to do so (with guidance to be completed by April 8, 2011 – 120 days from the law's enactment).

## **Telework Policies**

The Act requires each agency to:

1. establish a telework policy under which eligible employees of the agency may be authorized to telework
2. determine the eligibility for all employees of the agency to participate in telework
3. notify all employees of the agency of their eligibility to telework.

The Act directs agencies to fulfill these requirements no later than 180 days from enactment of the law (June 7, 2011). Agency policies also should describe a reasonable timeframe in which newly hired employees of the agency will be notified of their eligibility to telework.

Section 359 of Public Law 106-346 (October 23, 2000), stated that "[e]ach executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance." Therefore, the law required executive agencies to have a telework policy in place long before the passage of the Act (Public Law 111-292). However, the Act expanded upon and strengthened the Federal Government's commitment to the telework program. Accordingly, each agency was required to carefully review and revise its existing telework policy by June 7, 2011, to ensure compliance with the requirements of the Act.

For example, prior legislation did not offer details on the elements needed to establish a telework program at an agency (e.g., creating telework agreements) or how to go about implementing the day-to-day operational aspects of telework. The Act provided several clarifying criteria and agencies incorporated the changes into their existing policies. Agencies should plan to review their telework policies from time to time to ensure consistency with any future changes or modifications to telework legislation.

Agencies also should allow pre-decisional involvement to the fullest extent practicable as provided in Executive Order 13522 and satisfy collective bargaining obligations by working with labor when developing their telework policies and agreements.

In 2009-2010, OPM collaborated with agencies to perform a thorough review of their individual telework policies. The criteria by which policies were evaluated by OPM were derived from a thorough review of current research and best practices in telework, conducted by an interagency group of Federal telework experts. At the conclusion of the review, OPM provided specific feedback to agencies recommending revisions to their policies, and agencies followed through with implementation. The work jointly accomplished at that time laid a firm foundation for the development of sound telework policies as required by the Act.

There is no requirement in the Act that an agency submit its telework policy to OPM for its review or to determine compliance with the law. What the Act *does require* is that each executive agency "consult with the Office of Personnel Management in developing telework policies." The law further explains that OPM shall "provide policy and policy guidance for telework in the areas of pay and leave, agency closure, performance management, official worksite, recruitment and retention, and accommodations for employees with disabilities." Additionally, OPM will "assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals." OPM provides consultation by means of telework guidance and information offered on the central website at [www.telework.gov](http://www.telework.gov) (including this *Guide*) and at regularly-scheduled OPM-sponsored forums with TMOs in the course of the year.

A well-written telework policy is the foundation for a good telework program. For any agencies that wish to revisit or strengthen their telework policies, below are specific criteria that should be included in an effective policy:

There are two main objectives to be met if you are to have an effective telework policy:

1. The policy should be written in such a way that it can be clearly understood and easily used.
2. The policy should incorporate content fundamental to the development and support of an effective telework program.

#### ❖ CLARITY AND USABILITY

Policies should:

- use concrete, familiar words and not jargon, unexplained abbreviations, or other difficult terminology (i.e., keep your "end-users" in mind, many of whom may be unfamiliar with telework)
- avoid ambiguous terms and redundancies
- be organized logically (e.g., in preparing the various sections, do not skip around from topic to topic but instead organize the material by category for ease of reference)
- be designed and written to serve as a useful, practical resource to employees, managers, supervisors of teleworkers, TMOs, telework coordinators, Human Resource Specialists, exclusive employee representatives, and any other staff with a need to know about the agency's telework program.

#### ❖ CONTENT FUNDAMENTAL TO DEVELOP AND SUPPORT A TELEWORK PROGRAM

The policy should include content critical to the success of a telework program. Generally, content should cover issues related to: a) program implementation (i.e., content that supports effective program development), b) participant responsibilities (i.e., content that defines the roles and responsibilities of various participants in telework such as employees, managers, supervisors, and TMOs), and c) program operations (content that details the day-to-day activities or information necessary to support program success).

Specifically, with regard to Program Implementation, the telework policy should:

- include a statement of purpose (e.g., that identifies the intended benefits or outcomes of telework such as emergency preparedness, workforce efficiency, quality of work-life balance, cost savings, etc.)
- contain clear definitions of a) telework, b) eligibility, c) official worksite/duty station, and d) alternative worksite/location
- reference governing telework legislation such as Public Law 106-346 and Public Law 111-292 (Telework Enhancement Act of 2010)
- reference citations and appendices when reference is made to internal or external sources such as authorities, documents and related policies. If the telework policy is to be included on a web-based system such as Intranet for employee access, you may wish to include hyperlinks to these references for easier accessibility
- include language that reflects the Act's intent that all employees of the agency meeting the definition of "employee" as defined in Section 2105 of Title 5 of the United States Code are covered by the policy
- state that employee participation in a telework arrangement is voluntary
- emphasize that telework is an arrangement established first and foremost to facilitate the accomplishment of work
- include information about how to identify telework-eligible positions, including how to apply the limitations on participation described in the Act, e.g., identifying any legal bars to permitting an employee to telework, considering the nature of the work to be performed, and assessing whether permitting a particular employee -- or employees in a particular position -- to telework would diminish employee performance or agency operations
- reference agency emergency policies (e.g., pandemics and disasters prompting COOP procedures; dismissal and closure procedures due to weather; etc.) and the expectations that will be imposed upon given employees, with respect to these policies, if an employee enters into a telework arrangement with the agency.
- reference agency information technology (IT) and cybersecurity guidelines
- reference the Federal Employees' Compensation Act (FECA)
- highlight the importance of employee safety while working at alternative worksites
- identify aspects of the employment arrangement that could possibly be modified when an employee participates in telework (e.g., teleworkers may be allowed to begin the work day earlier and end earlier than on those days when they commute)

- identify whether full-time telework arrangements are allowable in the agency and if so, aspects of the employment arrangement that could potentially change if an employee teleworks full-time (e.g., could there be consequences to locality pay, benefits, travel, reduction-in-force procedures, etc.).

With regard to Participant Responsibilities, the telework policy should:

- define the responsibilities of supervisors and managers of teleworkers
- define the responsibilities of teleworking employees
- define the responsibilities of TMOs and telework coordinators
- emphasize teleworker responsibilities to ensure the arrangement does not have any negative impact on the work of other members of the work group (e.g., co-workers, supervisors)
- outline what support, materials, and equipment the agency may provide for teleworkers; what the agency will not provide; and what responsibilities for such may be shared between the agency and the teleworker (e.g., providing laptops, printers, phone, supplies, Internet service, etc.); agencies may wish to consult with their counsel concerning the implications of appropriations law for this subject.
- assign clearly-stated responsibilities for record keeping and reporting requirements, not only for the daily operational aspects but also for reporting to OPM in the aggregate each year (e.g., the annual *Status of Telework in the Federal Government Report to the Congress*).

With regard to Program Operations, the telework policy should:

- describe procedures for establishing a telework arrangement (e.g., application, approval levels, timeline for approval/denial, training requirements, written agreement, etc.)
- note that, with respect to employees covered by a collective bargaining agreement, appeals will be governed by the negotiated grievance procedure (unless this subject is specifically excluded from that procedure by the collective bargaining agreement, in which case the agency grievance procedure would govern) and that, for non-bargaining unit employees, the agency grievance procedure in force would cover appeals from a denial of a request to telework
- establish that the performance of teleworkers will be evaluated consistent with the agency's regular performance management system (i.e., teleworkers should be treated the same as non-teleworkers with regard to performance management)
- emphasize that teleworkers will receive the same treatment and opportunities as non-teleworkers (e.g., work assignments, awards and recognition, development opportunities, promotions, etc.)

- address expectations regarding communication between employees and supervisors; employees and co-workers; employees and customers/clients; and others. Will it be via telephone, email or a combination? How often should communication take place?
- identify specific agency requirements for training of employees prior to entering into a written telework agreement and beginning to telework
- identify agency expectations regarding telework training for managers and supervisors of teleworkers
- address unexpected contingencies that could impact the telework arrangement. Clearly define expectations of teleworking employees during situations that involve early dismissal, late arrival, or closure of Federal offices to the public. What explicit procedures should be followed when emergency events occur that may involve closure at the official worksite, alternative worksite, etc.? Also describe procedures to be followed in case of illness, recall during a telework day to the official site to meet business-related needs, etc. Will you allow a substitution day for the telework day missed, etc.?
- identify procedures for changing or modifying telework arrangements (e.g., schedules or locations)
- require that the written telework agreement be reviewed at regular intervals as determined by the agency
- describe procedures for termination or withdrawal from a telework agreement; with respect to terminations of telework, note that, for employees covered by a collective bargaining agreement, appeals will be governed by the negotiated grievance procedure (unless this subject is specifically excluded from that procedure by the collective bargaining agreement, in which case the agency grievance procedure would govern) and that, for non-bargaining unit employees, the agency grievance procedure in force would cover appeals.
- include clear and specific requirements for record keeping and reporting, both for individual teleworkers and to keep track of telework in the agency for reporting purposes each year (i.e., annual report to Congress). OPM recommends that the agency describe in the policy the system and workflow being used to capture participation of the various types of telework, i.e., bi-weekly work report, time and attendance system; payroll provider, etc. and provide specific instructions to managers and employees that this information must be carefully and consistently collected either manually or electronically for reporting purposes
- include clear and specific requirements for evaluation of the telework program, both for the individual teleworker and for the agency in general.

## **Eligibility and Participation**

**Agencies have discretion to make their own eligibility determinations for employees subject to operational needs while considering the specific requirements described in the Act.** In making these decisions, individual agencies are in the best position to define what it means to “ensure that telework does not diminish employee performance or agency operations.” There are a variety of circumstances in each individual agency that relate to position classification, organizational structures and agency mission areas. As a result, it would be impractical and inadvisable for OPM to suggest a Governmentwide “standard” or develop generic language that would imply a “one-size-fits-all” approach to making eligibility determinations and in notifying employees of eligibility. Agencies should take special care to specifically describe eligibility and participation criteria in their telework policies.

**Bear in mind that the Act makes a clear distinction between "eligibility" and "participation."**

To be able to participate in telework, an employee must first be identified as eligible. The Act specifies two categories of employees who may not be deemed eligible under any circumstances: an employee who “has been officially disciplined for being absent without permission for more than 5 days in any calendar year” and an employee who “has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for reviewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties [Public Law 111-292, 6502(a)(2)(A)(B)].” Thus, the Act does not establish new eligibility standards; rather, it specifies two conditions that make an employee *ineligible*. As before the signing of the Telework Act, specific determinations for eligibility are left to the discretion of agencies and should reflect agreement with standards established in individual agency policies.

The Act directly prohibits eligibility for telework only in the two narrow instances cited above. However, what does the term “officially disciplined” mean? Also, if an employee has been officially disciplined as described, does this permanently bar that employee from telework or is there a specific time limitation after which the employee may now be considered for telework? Generally, agencies have written policies that govern disciplinary and adverse actions. These actions can range from oral admonishments, to written letters of reprimand, and to suspension, termination or removal actions. These policies also often put time limits on maintaining documentation of specific actions. The term “official discipline” should be understood as a disciplinary action that results in the placement of a document in an employee’s official personnel file (OPF). In OPM’s view, the bar on participation would remain in effect as long as the document stays in the employee’s OPF. For example, an admonishment or reprimand usually comes out of the file after one or two years, respectively. However, a suspension and termination never come out of the file. Based on this reasoning and in this context, suspension and termination actions (**i.e., that are specifically related to the two categories of employees described in the law as ineligible**) which result in a document that permanently remains in the OPF would translate to a permanent prohibition on telework participation.

While each manager should remember that the intent of the Act is to promote and encourage telework, employees should understand that participation is not a "right;" rather, it should be based upon sound business and performance management principles.

Effective performance management is a key component of a successful telework program. The Act specifies in Section 6502(b)(3) that an agency's telework policy shall "provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and that employee."

Participation also may be limited because of the duties encompassed by the position. Some positions are not conducive to telework, for example, positions involving sensitive materials and those requiring daily face-to-face contact. Remember, according to the Act, the agency's policy shall "ensure that telework does not diminish employee performance or agency operations." 5 U.S.C. 6502(b)(1). Furthermore, Section 6502(b)(4) states that telework participation would "not apply to any employee of the agency whose official duties require on a daily basis (every work day) (A) direct handling of secure materials determined to be inappropriate for telework by the agency head; or (B) on-site activity that cannot be handled remotely or at an alternate worksite . . . ."

When making determinations regarding employee participation, OPM strongly encourages agencies and managers to be creative in considering the use of telework and other workplace flexibilities. For example, many share the perception that telework is an "all or none" proposition, i.e., some managers believe the duties of a specific class of employees by their nature are simply not conducive to telework. Therefore, they dismiss outright the possibility of telework for those employees. However, this is not necessarily the case. Most, if not all, jobs include some duties that are considered to be "portable" in that they generally can be performed at any location. Examples of portable work are reading reports; analyzing documents and studies; preparing written letters, memorandums, reports and other correspondence; setting up conference calls, and similar tasks that do not necessarily require that an employee be physically present at the regular worksite.

In many positions, employees typically perform portable duties on a regular basis. These jobs tend to lend themselves to routine telework arrangements in which telework occurs as part of an ongoing, regular schedule. The degree of portability of an employee's work factors into determining how often the employee may be permitted to telework on a routine basis each pay period. In other cases, as indicated above, the nature of a position may make it appear that it is not conducive to telework. However, agencies and managers are encouraged to consider if certain portions of the employees' work are, in fact, consistent with the "portable" types of duties that lend themselves to telework.

For example, an employee may be in a clerical/receptionist position in which the majority of the duties usually must be performed on site, e.g., meeting and greeting visitors to the office on most days. However, this same employee will still have work days when reports must be written or electronic filing must be done. Is it possible that the employee can accomplish the latter work one or more days per pay period using a telework arrangement? A similar situation may involve law enforcement employees that are required to file paperwork or produce reports. Remember that the Act describes barriers to participation only in cases in which the employee's official duties fall

outside what is conducive to telework "**every work day**" [Section 6502(b)(4)]. This means managers have flexibility to work out telework arrangements that take advantage of those days in which the employee is performing portable duties. Consistent with the Act, this flexible approach may open up the possibility for telework on a regular and recurring basis, even for positions previously thought to be ineligible.

Of course, there will be instances when a manager has made a good faith effort to accommodate telework for certain employees and simply cannot due to the nature of the work. In those cases, sound work/life principles and best practices would suggest that managers work with affected employees to avail them of opportunities to use [workplace flexibilities](#) appropriate to their situation, e.g., alternative work schedules such as flexible work schedules or compressed work schedules, etc.

## **Training**

Agencies must ensure that "an interactive telework training program is provided to employees eligible to participate in the telework program of the agency; and all managers of teleworkers....," according to the law. The Act requires that "an employee has successfully completed the interactive telework training program before that employee enters into a written agreement to telework..." While agencies may provide their own telework training program for employees, OPM has offered and will continue to provide basic telework training modules ([Telework 101](#)) for employees and managers on [www.telework.gov](#). As needed, OPM reviews these modules to update the information and to enhance the format and learning experience for participants.

Agencies will sometimes ask about the meaning of the term "interactive" in the context of the law. Does this mean that training must be "instructor-led" or face-to-face rather than via computer? In fact, the Act does not define the term "interactive," thereby leaving it subject to interpretation. OPM has always considered the [Telework 101](#) training on the website (and therefore, online) to meet the definition of "interactive" in that there is a built-in opportunity for the trainee to self-assess his/her understanding through the use of frequent questions and answers and progress checks throughout. In addition, in 2011, OPM engaged in a project to enhance this training in a number of ways, including both substance and format. This was accomplished keeping in mind the need to improve "interactivity" through the selective use of media tools to make the training more engaging for employees. However, OPM's interpretation is that there is no requirement that this training be instructor-led as compared to via computer, i.e., Internet-based.

In many cases, agencies have employees with written agreements who have been teleworking for some time. In that case, are they still required to take the training? Not necessarily. The Act states that the head of the agency may provide for an exemption from the training requirements "if the head of the agency determines that the training would be unnecessary because the employee is already teleworking under a work arrangement in effect before the date of enactment..." The bottom line is that employees who have already been teleworking may be exempted from this training requirement; however, the decision to waive this requirement must be made by the agency head and implemented in the manner in which that is normally done in your agency. Even if employees are specifically exempted, OPM recommends that agencies provide to those employees at least updated information related to the Act since their original training would not have covered its requirements.

Agencies should also be aware that specialized training for managers is available through OPM's Eastern and Western Management Development Centers. Details on the Management Development Centers and course schedules can be found at [www.leadership.opm.gov](http://www.leadership.opm.gov).

## Telework Agreements

The Act **requires every telework participant to have a written agreement (regardless of whether telework is regular and recurring, or situational)**. The written agreement is "entered into between an agency manager and an employee authorized to telework...outlines the specific work arrangement that is agreed to; and is **mandatory in order for any employee to participate in telework.**" It is important to remember that the Act requires that an employee successfully complete telework training before being allowed to enter into a written agreement and telework.

An employee may request a telework arrangement either orally or in writing (e.g., if an employee approaches her supervisor to participate in situational telework in order to complete a special project at home); however, this presumes that every employee has already successfully completed telework training and has a written telework agreement in place. It is especially important to take this into account for any employee that anticipates opting for "unscheduled telework" in accordance with dismissal and closure procedures. In other words, if an employee does not have a written telework agreement in place, that employee may not opt for "unscheduled telework" when it is offered due to the status of Federal Government operations. With this in mind, managers are strongly encouraged to think through potential employee situations and be flexible when developing telework agreements. For example, let's assume an employee is not likely to work a routine telework schedule but the person's duties would allow situational telework on a case-by-case basis. If the manager of the office anticipates the employee could potentially request "unscheduled telework" when offered during inclement weather, it is up to the manager and employee to agree on and sign a written telework agreement that stipulates the employee's eligibility for situational telework (which includes "unscheduled telework"). In addition, the employee should be encouraged to telework on an ad-hoc basis during the year to ensure s/he is prepared for such an eventuality.

Many agency policies and collective bargaining agreements currently describe specific requirements for the telework agreement, or make agreement templates available to employees and managers. For agencies seeking to develop or revise agreement forms, it might be helpful for you to consider this bulleted outline when drafting specific content. The following are recommended tips based on best practices in order to help guide you in this process; *they are not specifically required in the Act:*

- Term of the agreement: consider a one-year renewable agreement, or even a six-month agreement in telework situations that may need to be revised more frequently
- Type of telework specified by the agreement: describe if the agreement is for regular, recurring telework, or situational/ad-hoc/episodic telework
- Schedule: specify days of the week and the hours to be worked during telework days
- Requirements: outline any additional requirements (e.g., technology) beyond the prerequisites to telework outlined in the Act (e.g., training, written agreement)

- Expectations: clarify any assumptions, for example, regarding work location (e.g., if expected to work only from home) and frequency and modes of communication (e.g., email vs. telephone, core hours for contact, speed for returning calls)
- Equipment and other expenses: determine and specify equipment and/or expenses that will be covered by the agency, employee, or shared
- Expectations for emergency telework, i.e., be clear on whether or not an employee is expected to work in the case of a continuity event such as a National or local emergency; during an emergency event involving inclement weather; or another situation that may result in a disruption to normal office operations. With regard to Continuity of Operations, note that Emergency Relocation Group (ERG) members must be prepared to telework at any time.
- Information security: provide a summary for data security procedures in the agreement
- Safety: provide a self-certification safety checklist to telework employees as a guide when preparing the alternative work location for telework
- Termination/modification: ensure that employees know the agreement can be terminated or modified, and outline the conditions for termination/modification.

To summarize, telework agreements should be well-written, jargon-free, practical, and clear regarding responsibilities, roles and expectations. In short, written agreements should reflect and be consistent with the agency's telework policy.

### **Telework Managing Officer (TMO)**

The Act requires that each agency designate a single position to function as a TMO. The TMO designation is new with the passage of the Act, which requires the TMO to be a senior official of the agency, established within the office of the Chief Human Capital Officer (CHCO), or its equivalent, and who has direct access to the head of the agency. Note that s/he does not need to be the CHCO. The important thing is that the position be given direct access to the head of the agency. The TMO is meant to be a strategic thinker and planner who will help the agency to incorporate telework in a way that makes good business sense.

The fact that someone is designated as the TMO does not mean that the individual who serves in this capacity is prohibited from holding another office or position in the agency. However, this person is directly accountable for the telework program at each agency.

The TMO:

- is responsible for policy development and implementation related to agency telework programs
- serves as an advisor for agency leadership, including the CHCO
- serves as a resource for managers and employees on telework matters
- is the primary point of contact with OPM on telework matters.

In addition to making telework an integral way of doing business in the agency, the TMO is responsible to help with the development of goals and metrics in order to evaluate the effectiveness of the program. In designating a TMO, agencies should look for the same leadership competencies and high standards that they would consider in selecting for any leadership position.

The way agencies implemented telework before the law was passed was that each agency had a "Telework Coordinator" at the Department/Agency level (e.g., Department of Homeland Security), and also individual "telework coordinators" at the subagency/subcomponent level (e.g., Immigration and Customs Enforcement, Transportation Security Administration, etc.). Whenever OPM would require agency-wide information on telework such as for the annual aggregate data collected on telework participation, it would work with the single point of contact at the Department/Agency-level. The Agency-wide coordinator would then work with his/her subcomponent "coordinators" to gather the information for their respective areas and then would tally everything to submit the data in a single report to OPM on behalf of the entire agency.

The TMO assumes many of the duties of what was formerly the Department-level "Telework Coordinator." The role within an agency of pulling together information on telework from various internal sources and then reporting to OPM now falls on the TMO. However, the TMO is much more than that since his/her duties extend beyond operational day-to-day aspects of telework and delve more into policy, advising, and an overarching management of the entire telework program for his/her agency.

Agencies have discretion as to whether or not, or how, they will continue to utilize "telework coordinators" to implement the day-to-day aspects of telework subject to the oversight of the TMO. The bottom line, however, is that **each agency will have only one individual, i.e., the TMO, who is the single accountable person according to the law for the agency's telework program.** In other words, when OPM contacts any given agency in the future to either request or disseminate information on Federal telework, we will contact the TMO. It will then be up to the TMO to coordinate internally with other staff members assisting with operational telework issues in that agency. Human Resource staff or agency employees that have questions or issues about telework should be encouraged to direct their concerns to the agency's TMO or the TMO's designee.

## **Reporting**

Each year, OPM prepares and submits a report to the Congress that addresses the telework programs of each agency. This annual collaboration often begins with a Call for Telework Data from OPM to the agencies and culminates in the [\*Status of Telework in the Federal Government Report to the Congress\*](#). The first report is due 18 months from the date of enactment of the law (approximately June 2012), and every year thereafter.

The report includes various types of information important to understanding agency progress in their telework programs including:

- the degree of participation by employees of each agency in teleworking during the period covered by the report (for some agencies, this will also include the degree of participation by bureau, division, or other major administrative unit)
- the method for gathering telework data in each agency
- the reasons for positive or negative variations in telework participation if the total number of employees teleworking is 10% higher or lower than the previous year in any agency
- the agency goal for increasing telework participation to the extent practicable or necessary
- an explanation of whether or not an agency met its goals for the last reporting period and, if not, what actions are being taken to identify and eliminate barriers
- an assessment of the progress each agency has made in meeting agency participation rate goals and other agency goals related to telework, such as the impact of telework on emergency readiness, energy use, recruitment and retention, performance, productivity, and employee attitudes and opinions regarding telework
- best practices in agency telework programs.

OPM will continue to work directly with the agency TMOs to discuss the types of data required and methods for data collection as the need arises.

## **Managers and Supervisors**

This segment provides guidance to Federal managers and supervisors regarding their responsibilities under the Act to implement telework programs. Much of the above provided to Federal agencies and TMOs is directly applicable to managers and supervisors. Please consult the appropriate sections above for answers to many of your questions about implementing an effective telework program in your unit. In addition, please consider the following guidelines and tips.

### **How do Federal Managers and Supervisors Benefit from Telework?**

Federal agencies, including managers and supervisors, can benefit from telework because it:

- helps with recruiting and retaining the best possible workforce
- ensures Continuity of Operations and maintains operations during emergency events - telework is a key component in ensuring the performance of essential Government functions during National or local emergencies such as natural disasters or National security incidents; or other situations that may disrupt normal operations
- promotes management effectiveness by targeting reductions in management costs related to employee turnover and absenteeism, and reduces real estate costs, transit costs, and environmental impact
- enhances work/life effectiveness and balance - telework allows employees to better manage their work and family obligations, thereby retaining a more resilient, results-oriented Federal workforce better able to meet agency mission and goals.

### **How to Be an Effective Manager or Supervisor of Teleworkers**

Managerial and supervisory skill, participation and support can make telework an effective tool and asset for any organization. To effectively implement a telework program, managers should put the following guidelines, recommendations, and in some cases - laws, into practice.

Lead by Example - Managers and supervisors must be committed to using telework to the fullest extent possible if Federal telework programs are to succeed. Research in the work/life field bears out that supervisors, managers and senior executives who model the use of workplace flexibilities such as telework in any organization serve as key drivers in effecting positive cultural change in that organization. This is especially so if the organization's climate and culture have traditionally reflected a skeptical, or even hostile, view of telework. There is a tendency for employees to model the behavior of supervisors. Non-participation of supervisors may send a non-verbal message of disapproval. It might even suggest that getting ahead in the Federal workforce (e.g., being promoted) depends on the employee's physical presence at the main worksite. Managers and supervisors that telework will help to dispel this false notion and lead the way towards a telework-friendly culture in the agency.

Know Your Telework Managing Officer (TMO) - Each agency has designated a TMO who serves as the primary point of contact for policy and program questions. Managers should maintain frequent contact with their TMO, or the TMO's designee, to ensure the agency's policy and procedures are properly applied and to ensure they are aware of the full range of support and resources available to them.

Know Your Telework Policy and Procedures, Including Applicable Collective Bargaining Agreements - Managers should familiarize themselves and their employees with their agency's policy and applicable collective bargaining agreements to ensure they are in compliance with their requirements. Most agency policies and many collective bargaining agreements will include procedures for establishing telework agreements, obtaining equipment, and related matters.

In addition, all agencies should have policies on information systems and technology security (see the section on **Safety** below), and managers/supervisors must ensure their equipment choices and telework agreements comply with these policies. Information security includes protection of sensitive "hard-copy" files and documents.

Participate in Training - As described above, OPM offers online interactive telework training for managers and employees at [www.telework.gov](http://www.telework.gov). It can be accessed directly at the following link: [www.telework.gov/tools\\_and\\_resources/training/index.aspx](http://www.telework.gov/tools_and_resources/training/index.aspx). Also, many agencies offer their own telework training and TMOs are available to consult with managers. Remember that employees who wish to telework must successfully complete telework training prior to entering into a written telework agreement, unless exempted by the head of the agency as provided in the law [P.L. 111-292, Section 6503(b)]. Managers and supervisors are encouraged to complete telework training.

Information technology security training, administered at the agency level, is mandatory. Managers must ensure teleworkers complete this training and understand their responsibilities in safeguarding work-related information.

Determine Employee Eligibility - Agencies have discretion to determine telework eligibility criteria for their employees, subject to the requirements and limitations of the law. These criteria should be detailed in agency policy and may also be covered in applicable collective bargaining agreements. See the section on **Eligibility and Participation** above for guidelines on making these types of determinations based on the law and your agency's telework policy.

Understand and Assess the Needs of the Group - Telework is often implemented piecemeal, rather than strategically, as individuals request arrangements. This reactive approach carries the risk of raising fairness issues. To the extent possible, telework should be implemented strategically, taking into account the needs and work of the group. Agencies have made this easier by making broader determinations on employee eligibility and notifying employees. However, managers and supervisors may be making decisions with regard to situational telework and groups of newly-hired employees.

**Create and Sign Written Telework Agreements** - The teleworker and his or her manager/supervisor must enter into a written telework agreement for every type of telework, whether the employee teleworks regularly or on a situational basis. The parameters of this agreement are most often laid out by the agency policy and/or collective bargaining agreement, but should include certain key elements (reference the Act or the section above on **Telework Agreements**). Most importantly, the agreement should be signed and dated by the manager and employee. Managers and TMOs are encouraged to keep copies of all telework agreements on file.

Telework agreements are living documents and should be revisited by the manager and teleworker and re-signed regularly, preferably at regular intervals as defined by your agency's telework policy and applicable collective bargaining agreements. At a minimum, new telework agreements should be prepared and signed when a new employee/supervisory relationship is established.

OPM strongly recommends that agencies include specific language in the telework agreement for any employee who may potentially be asked to telework in case of emergency situations or continuity events. Continuity events would include a National or local emergency or pandemic health crisis that results in activation of continuity plans. Emergency events would include inclement weather or other situations that may disrupt normal operations and lead to an offering of "unscheduled telework." Remember that the law requires all teleworkers to have a written telework agreement in place. This means that an employee who wishes to opt for "unscheduled telework" during a weather emergency may not telework if a written agreement is not in place. Individuals that are potential situational teleworkers (including "unscheduled telework") should be encouraged to practice teleworking on a regular basis and as often as possible.

**Base Denials on Business Reasons** - Telework requests may be denied and telework agreements may be terminated. Telework is not an employee right, even if the employee is considered "telework-eligible."

Denial and termination decisions must be based on operational needs or performance in accordance with the description in the law, not personal reasons. For example, a manager may deny a telework arrangement if the duties of the position are not amenable to telework. If the employee's denial or termination was as a result of a performance issue, the denial or termination should include information about when the employee might reapply, and also if applicable, what actions the employee should take to improve his or her chance of approval. Denials should be provided in a timely manner. Managers should also review the agency's collective bargaining agreement(s) and telework policy to ensure they meet any applicable requirements.

Managers should provide employees (and keep copies of) signed written denials or terminations of telework agreements. These should include information about why the arrangement was denied or terminated. The TMO should also be alerted regarding denials or terminations and copies provided to him/her as well.

With respect to employees covered by a collective bargaining agreement, appeals will be governed by the negotiated grievance procedure (unless this subject is specifically excluded from that procedure by the collective bargaining agreement, in which case the agency grievance procedure would govern). For non-bargaining unit employees, the agency grievance procedure in force would cover appeals from a denial of a request to telework.

Use Good Performance Management Practices - It is important to note that performance standards for teleworking employees must be the same as performance standards for non-teleworking employees. Management expectations for performance should be clearly addressed in the employee's performance plan, and the performance plan should be reviewed to ensure the standards do not create inequities or inconsistencies between teleworking and non-teleworking employees. Like non-teleworking employees, teleworkers are held accountable for the results they produce. Good performance management techniques practiced by a manager will mean a smooth, easier transition to a telework environment. Resources for performance management are available from OPM at [www.opm.gov/perform](http://www.opm.gov/perform).

Communicate Expectations - The telework agreement provides a framework for the discussion that needs to take place between the manager and the employee about expectations. For all types of telework, this discussion is important to ensure that managers and employees understand one another's expectations concerning basic issues such as the following:

- What technologies will be used to maintain contact?
- What equipment will the agency provide; what equipment will the teleworker provide; what will be shared?
- Who provides technical assistance in the event of equipment disruption?
- What will the weekly/monthly telework schedule be?
- How will the manager and co-workers be kept updated about the schedule?
- Do changes need to be pre-approved?
- What will the daily telework schedule be; will the hours be the same as in the main office, or will they be different?
- What are the physical attributes of the telework office and do they conform to basic safety standards? (agencies may wish to provide employees with a self-certifying safety checklist for guidance)
- What are the expectations for availability by phone, email, etc?
- What is the expectation regarding the amount of notice (if any) given for reporting to the official worksite, and how will such notice be provided?
- How is a telework agreement terminated by management or the employee?
- Who is expected to telework in an emergency?
- What is expected of a teleworker in the event of an emergency?

Facilitate Communication with All Members of the Work Group - Teleworking and non-teleworking employees must understand expectations regarding telework arrangements including coverage, communication and responsibilities. Although individual teleworkers must take responsibility for their own availability and information sharing, managers can help ensure that methods are in place to maintain open communication across the members of a work group. Employees and managers alike are encouraged to exercise professional courtesy in keeping one another informed about their availability throughout the work day.

Maintain Fairness in Assigning Work and Rewarding Performance - Managers should avoid distributing work based on "availability" as measured by physical presence, and avoid the pitfall of assuming someone who is present and looks busy is actually accomplishing more work than someone who is off-site. Good performance management practices are essential for telework to be effective and equitable.

Make Good Decisions About Equipment - GSA offers guidelines for the equipment and support an agency may provide to teleworkers, in [Federal Management Regulation \(FMR\) Bulletin 2006-B3, Guidelines for Alternative Workplace Arrangements](#) (see "GSA Telework Information" in the **References** section at the end of this document). Generally, decisions regarding the ways in which teleworkers should be equipped are made by the agency and individual manager consistent with the agency's telework policy and applicable collective bargaining agreements. Managers should familiarize themselves with these guidelines and also with their agency's policy on equipment. Within those constraints, the challenge for managers is in finding the right balance between budget, security and effectiveness. Factors to consider include technology needs based on the work of the employee, agency security requirements, and budget constraints. In addition, managers may also need to have conversations as appropriate to ensure the availability of equipment related to requests for reasonable accommodation.

Practice Telework - The success of an organization's telework program depends on regular, routine use. Experience is the only way to enable managers, employees, information technology (IT) support, and other stakeholders to work through any technology, equipment, communications, workflow, and associated issues that may inhibit the transparency of telework. Individuals expected or anticipated to telework in an emergency situation, including managers and supervisors, should be encouraged to telework with some frequency under non-emergency circumstances. Managers and supervisors should make it a point to regularly participate in telework in order to lead by example and be comfortable in dealing with the dynamics of managing in a telework environment.

Safety - Teleworkers must address issues of their own personal safety to be effective while teleworking from a home office or other alternative worksite. Government employees causing or suffering work-related injuries and/or damages at the alternative worksite are covered by the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, or the Federal Employees' Compensation Act (workers' compensation), as appropriate.

Managers should review a safety checklist with teleworkers to ensure compliance and should immediately investigate any reports of accidents or injuries on the job.

## **Employees**

This segment provides guidance to employees regarding their participation in agency telework programs. Employees should be aware of the information on telework provided to Federal agencies and TMOs above. Please consult the appropriate sections above for answers to many of your questions about your agency's telework program in the context of the law. In addition, please consider the following guidelines and tips.

### **Why Would I Want to Participate in Telework?**

Employees may benefit from telework because:

- it helps employees have greater flexibility in accomplishing their work while also meeting personal and community responsibilities
- it can help reduce stress by decreasing commuting time, freeing that time up to accomplish family and personal matters
- it can help free you from office distractions, which may be particularly important when working on a complex project
- it encourages engagement in your agency - when employees feel they have greater control over their work environment, they tend to feel more committed to their organizations.

### **How to Be an Effective Teleworker**

Employees who understand the responsibilities and expectations for all parties involved will have a more successful experience with telework. To be an effective teleworker, employees should put the following guidelines, recommendations, and in some cases - laws, into practice.

Know Your Telework Managing Officer (TMO) - Each agency has designated a TMO who serves as the primary point of contact for policy and program questions. Employees should maintain contact with their TMO or the TMO's designee for support and assistance as well as to ensure they follow the agency's policy and procedures.

Know Your Telework Policy and Procedures, Including Applicable Collective Bargaining Agreements - Employees should familiarize themselves with their agency's policy and applicable collective bargaining agreements to ensure they are in compliance with their requirements. Most agency policies will include procedures for establishing telework agreements, obtaining equipment, and related matters.

In addition, all agencies should have policies on information systems and technology security (see **Safety**), and employees should work with their managers/supervisors to ensure their equipment choices and telework agreements comply with these policies. Information security includes protection of sensitive "hard-copy" files and documents needed for work.

Conduct a Self-Assessment - A successful telework arrangement begins with a good self-assessment. Employees should consider the following factors in making an honest determination about their telework capabilities:

- My duties include sufficient "portable" work for the amount of telework being proposed
- I have the ability to work independently, without close supervision
- I am comfortable with technology needed (if any) to telework
- I have good communication with my supervisor, co-workers, and customers that will enable a relatively seamless transition from my official site to my alternative site
- I have sufficient telework office space at my alternative location in order to get work done
- My work area is safe and meets all agency telework policy requirements for safety
- Dependent care arrangements (e.g., child care, elder care, or care of any dependent adults) are in place because I recognize that I may not use telework as a means for dependent care
- I have the ability to be flexible about the telework arrangement in order to respond to the needs of the supervisor, work group, and the work load.

Participate in Training - As described above, OPM offers online interactive telework training for managers and employees at [www.telework.gov](http://www.telework.gov). It can be accessed directly at the following link: [www.telework.gov/tools\\_and\\_resources/training/index.aspx](http://www.telework.gov/tools_and_resources/training/index.aspx). Also, many agencies offer their own telework training. Remember that employees who wish to telework must successfully complete telework training prior to entering into a written telework agreement, unless exempted by the head of the agency as provided in the law [P.L. 111-292, Section 6503(b)].

Information technology security training, administered at the agency level, is also mandatory. Teleworkers must complete this training and understand their responsibilities in safeguarding work-related information.

Enter into A Signed, Written Telework Agreement - The teleworker and his or her manager/supervisor must enter into a written telework agreement for every type of telework, whether the employee teleworks regularly or on a situational basis. The parameters of this agreement are most often laid out by the agency policy and/or collective bargaining agreement, but should include certain key elements (reference the Act or the section above on **Telework Agreements**). Most importantly, the agreement should be signed and dated by the manager and employee.

Elements that should be incorporated into a written telework agreement include:

- the location of the telework office (typically the home residence of the employee)
- an equipment inventory, i.e., what the employee will supply; what the agency will supply, what will be shared
- the telework schedule

- telework contact information (e.g., the phone number to use on the telework day)
- a safety checklist, i.e., a self-certifying list to guide you in checking the safety of your alternative work site
- expectations for emergency telework, i.e., be clear on whether or not you are expected to work in the case of a continuity event such as a National or local emergency; during an emergency event involving inclement weather; or another situation that may result in a disruption to normal office operations. With regard to Continuity of Operations, note that Emergency Relocation Group (ERG) members must be prepared to telework at any time.

Telework agreements need to be updated as circumstances change, e.g., if the telework schedule changes. The manager and teleworker should work together periodically to evaluate the arrangement, make changes in the agreement as necessary, and re-sign the document.

**Safeguard Information and Data** - Employees must take responsibility for the security of the data and other information they handle while teleworking. Employees should:

- be familiar with, understand, and comply with their agency's information security policies
- participate in agency information security training; and
- maintain security of any relevant materials, including files, correspondence, and equipment, in addition to following security protocols for remote connectivity. Depending on the sensitivity of the information being handled, the home office may need to include security measures such as locked file cabinets, similar to what may be used at the official worksite.

**Plan the Work** - Employees who telework should assess the portability of their work and the level of technology available at the remote site as they prepare for telework. Employees are encouraged to plan their telework days to be as productive as possible by considering the following questions:

- What files or other documents will I need to take with me when I leave my main worksite the day before teleworking?
- What equipment will I need to take?
- Who needs to be notified that I will be teleworking?
- What other steps should I take before I leave my office (e.g., forwarding the phone)?
- In the case of emergency or "unscheduled" telework, what should I have available at all times at my alternative worksite to enable me to be functional without going back to the main office to retrieve materials?

Manage Expectations and Communication - Managers are ultimately responsible for the effective functioning of the work group. Nevertheless, teleworkers should help manage the group's expectations and their own communication to avoid any negative impact from their arrangement. Issues that should be addressed include the following:

- Backup - even with very portable work there are invariably instances where physical presence is required and a co-worker may need to step in. Co-worker backup should be planned, it should not be onerous, and it should be reciprocal. Cross-training of staff has broad organizational benefits and should be a management priority
- On-the-spot Assistance - teleworkers may occasionally need someone who is physically present in the main office to assist them (e.g., to fax a document or look up information). Again, these arrangements should not be unduly burdensome; a "buddy system" between teleworkers may be the least disruptive solution
- Communication with the Manager - the manager must be kept apprised of the teleworker's schedule, how to make contact with the teleworker, and the status of all pending work
- Communication with Co-workers and Customers - co-workers must be informed about the appropriate handling of telephone calls or other communications that are the teleworker's responsibility, and customers should not notice that the teleworker is working from an alternative worksite (i.e., work should be seamless).

Safety - Teleworkers must address issues of their own personal safety to be effective while teleworking from a home office or other alternative worksite. Government employees causing or suffering work-related injuries and/or damages at the alternative worksite are covered by the Military Personnel and Civilian Employees Claims Act, the Federal Tort Claims Act, or the Federal Employees' Compensation Act (workers' compensation), as appropriate.

Employees should:

- provide appropriate telework space, with ergonomically correct chair, desk, and computer equipment
- complete a safety checklist self-certifying the space is free from hazards. This checklist is not legally binding, but details management expectations and, if signed, assumes compliance
- immediately report any work-related accident occurring at the telework site and provide the supervisor with all medical documentation related to the accident. It may be necessary for an agency representative to access the home office to investigate the report.

## **ADDITIONAL GUIDANCE**

### **Safety**

Federal agencies and staff are responsible for the security of Federal Government property, information, and information systems. Telework does not change this responsibility. If not properly implemented, telework may introduce vulnerabilities into agency systems and networks. To prevent security incidents, the Federal Information Security Management Act of 2002 requires agencies to protect information and information systems commensurate with risk. In addition, OMB memorandum M-06-16 recommends actions to protect remote information that all agencies should continue to implement. Agencies should refer to the NIST security telework site for more information at <http://csrc.nist.gov/telework>.

### **Performance Management**

Effective performance management is important to the success of the telework program. The Act specifies in Section 6502(b)(3) that an agency's telework policy shall "provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and that employee." When agencies make decisions regarding telework eligibility and participation, sound business and performance management principles must be considered, consistent with the requirements of the Act.

When implementing the telework program, managers should keep in mind that performance standards for teleworking employees must be the same as performance standards for non-teleworking employees. Also, management expectations for performance should be clearly addressed in an employee's performance plan, regardless of whether or not the employee is a teleworker. When an employee participates in telework, expectations related to accountability do not differ by virtue of the telework arrangement. Following clear and consistent performance management principles and techniques should result in a seamless transition for managers and their employees moving to telework arrangements. Resources for performance management are available from OPM at [www.opm.gov/perform](http://www.opm.gov/perform).

### **Pay, Leave and Work Schedule Flexibilities**

#### **Pay**

An employee's pay is based on the location of the employee's official duty station (worksit). An agency must determine and designate the official worksit for an employee covered by a telework agreement on a case-by-case basis using the following criteria:

- the official worksit for an employee covered by a telework agreement is the location of the regular worksit for the employee's position (i.e., the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report physically at least twice each bi-weekly pay period on a regular and recurring basis to that regular worksit

- the official worksite for an employee covered by a telework agreement who is not scheduled to report at least twice each bi-weekly pay period on a regular and recurring basis to the regular worksite is the location of the telework site (i.e., home or other alternative worksite), except in certain temporary situations
- in the case of a telework employee whose work location varies on a recurring basis, the employee need not report at least twice each bi-weekly pay period to the regular worksite established by the agency as long as the employee is performing work within the same geographic area (established for the purpose of a given pay entitlement) as the employee's regular worksite. For example, if a telework employee with a varying work location works at least twice each bi-weekly pay period on a regular and recurring basis in the same locality pay area in which the established official worksite is located, the employee need not report at least twice each bi-weekly pay period to that official worksite to maintain entitlement to the locality payment for that area.

### **Pay During Temporary Telework Arrangements**

In certain temporary situations, an agency may designate the location of the regular worksite as the official worksite of an employee who teleworks on a regular basis at an alternative worksite, even though the employee is not able to report at least twice each bi-weekly pay period on a regular and recurring basis to the regular worksite.

- the intent of this exception is to address certain situations where the employee is retaining a residence in the commuting area for the regular worksite but is temporarily unable to report to the regular worksite for reasons beyond the employee's control
- a key consideration is the need to preserve equity between the telework employee and non-telework employees who are working in the same area as the telework location. Also, the temporary exception should generally be used only in cases where (1) the employee is expected to stop teleworking and return to work at the regular worksite in the near future, or (2) the employee is expected to continue teleworking but will be able to report to the regular worksite at least twice each bi-weekly pay period on a regular and recurring basis in the near future.

For more information on official duty station, please see

[http://www.opm.gov/oca/pay/HTML/Official\\_Duty\\_Station.asp](http://www.opm.gov/oca/pay/HTML/Official_Duty_Station.asp).

## Premium Pay

Typically, the same premium pay rules apply to employees who telework versus those who report in to their regular worksites.

- *Night Pay* - Night pay is a 10 percent differential paid to employees for ***regularly scheduled work*** performed at night. It is computed as a percentage of the employee's rate of basic pay (including any applicable locality payment or special rate supplement) (emphasis added). A teleworker may not earn night pay by choosing to work at night. Night pay is paid for regularly scheduled work performed at night. This generally means work scheduled before the beginning of the administrative workweek. However, night pay is also paid for night work on a temporary assignment to a different daily tour of duty during the administrative workweek.

Please see <http://www.opm.gov/oca/pay/html/NIGHT.asp> for more information on night pay.

- *Sunday Premium Pay* - An employee is entitled to 25 percent of his or her rate of basic pay for work performed during a ***regularly scheduled*** basic 8-hour tour of duty that begins or ends on a Sunday (emphasis added). A teleworker must be regularly scheduled to work on a Sunday in order for that employee to be eligible for the 25 percent Sunday premium pay.

Please see <http://www.opm.gov/oca/WORKSCH/HTML/sunday.htm> for more information on Sunday premium pay.

## Leave and Work Scheduling Flexibilities

An employee must follow his/her agency's telework policy for requesting leave and work scheduling changes when teleworking.

Similar to when an employee is at his or her regular worksite, an employee can take leave for a portion of the day. Agencies may choose to allow an employee to adjust his/her work schedule during a telework day based on the employee's telework agreement (e.g., to attend a medical appointment or deal with a household repair). Both leave and work scheduling flexibilities are not only to assist the employee in balancing his or her personal needs, but also to maintain productivity by allowing the employee to work around disruption in his or her work day.

For additional information on leave administration, please visit  
<http://www.opm.gov/oca/leave/index.asp>.

For additional information on pay administration, premium pay, and work scheduling, please visit  
<http://www.opm.gov/oca/pay/HTML/factindx.asp>.

## **Telework and Continuity of Operations**

The Act states that “each executive agency shall incorporate telework into the continuity of operations plan of that agency.” Federal Continuity Directive (FCD) 1, *National Continuity Program and Requirements*, U.S. Department of Homeland Security, February 2008 (<http://www.fema.gov/about/org/ncp/coop/planning.shtm>), defines COOP as “an effort within individual agencies to ensure they can continue to perform their Mission Essential Functions (MEFs) and Primary Mission Essential Functions (PMEFs) during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.”

There is a direct relationship between the Continuity of Operations (COOP) plan and telework. The two programs, telework and COOP, share a basic objective: to perform and maintain agency functions from an alternative location. Telework can help ensure that essential Federal functions continue during emergency situations.

Telework must be a part of all agency emergency planning. Telework allows employees to conduct some or all of their work at an alternative worksite away from the employee’s typically used office since that may not be viable during an emergency. Each Department and Agency is encouraged to conduct an annual telework exercise where employees participate in a telework day, in order to test the organization’s capability.

Management must be committed to implementing telework as broadly as possible to take full advantage of the potential of telework for this purpose and ensure that:

- equipment, technology, and technical support have been tested
- employees practice telework so that they are comfortable with the technology and communications methods
- managers practice telework so that they are comfortable managing a distributed workgroup

The key to successful use of telework in the event of an emergency is an effective routine telework program. An agency’s telework policy should include:

- information on who is expected to telework in an emergency
- what is expected of teleworkers in the event of an emergency.

As many employees as possible should have telework capability that includes:

- having a telework agreement in place
- connectivity
- equipment commensurate with work needs
- ability to practice telework on a regular basis to ensure effectiveness during an emergency.

## **Manager Responsibilities**

- Understand the agency's emergency plans (continuity plan, pandemic plan, etc.) and management roles in executing the plan
- Implement telework to the greatest extent possible so systems are in place to support successful telework in an emergency
- Notify employees designated as emergency personnel for a continuity or pandemic event
- Communicate expectations to both emergency and non-emergency employees regarding their roles and responsibilities in an emergency
- Establish communication processes to notify emergency employees and non-emergency employees of the activation of the agency's emergency plan and the agency operating status during the emergency
- Integrate emergency expectations into telework agreements as appropriate
- Determine how employees who telework will communicate with one another and with management to accomplish work
- Determine how time and attendance will be maintained
- Allow personnel who might telework in case of an emergency to telework regularly to ensure functionality.

## **Teleworker Responsibilities**

- Maintain a current telework agreement detailing any emergency telework responsibilities specified for a continuity and/or pandemic event, as appropriate
- Practice telework regularly to ensure effectiveness
- Be familiar with the agency's emergency plans (continuity plan, pandemic plan, etc.) and your manager's expectations for how you will telework during such events
- Be flexible; be willing to perform all duties assigned to you by management even if they are outside your usual or customary duties.

## **Washington, DC, Area Dismissal and Closure Procedures (Unscheduled Telework Option)**

In 2010, OPM unveiled the unscheduled telework option as a way for agencies and employees to continue work operations during snow and other emergencies and ensure the safety of the Federal workforce. The unscheduled telework option is a type of situational, or ad-hoc telework, that will allow employees in the Washington, DC, area to work from home or a nearby alternative location, when OPM announces a modified operating status due to inclement weather or special events that severely impact commuting.

For example, when OPM announces that “Federal agencies in the Washington, DC, area are **OPEN** and employees have the **OPTION** for **UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK**,” eligible teleworkers will have the option of reporting to the office or notifying their supervisor of their intent to take unscheduled leave or perform unscheduled telework. The unscheduled leave and unscheduled telework options are also incorporated into other dismissal announcements. Agencies are encouraged to consult the OPM publication, [Washington, DC, Area Dismissal and Closure Procedures](#), for answers to questions about dismissal or closure situations.

### **Recruitment and Retention**

Federal agency recruitment and retention efforts are directly affected by the use of telework as a management tool and are addressed in the Act.

The implementation of the Act provides a unique opportunity to leverage telework as a human capital management tool. Managers are encouraged to use telework as a tool to help attract, recruit, and retain the best possible workforce. Many people seek jobs with an option to telework as a means to reduce commuting time and costs and improve their work/life effectiveness. Telework can broaden the pool of highly qualified candidates because it provides flexibilities that meet varying needs. For example, telework may be used as a reasonable accommodation for an individual with a disability who may require, or prefer, to work at home. While not all persons with disabilities need, or want, to work from home, telework provides a viable option for individuals with disabilities that affect mobility or pose related challenges. Additionally, telework allows employers to hire individuals who live further away from what would be considered a reasonable commuting distance from their place of employment and who are not able to relocate. It also helps employers retain top-performing employees who want or need to relocate their residence beyond the local commuting area.

Telework can also help managers in other ways. For example, it can be used as an effective succession planning tool. Telework is an appealing option for many retirees who are willing to continue working with their former organization, thereby helping to facilitate a smooth and continuous transition of institutional knowledge and technical competencies.

## **Accommodations for Employees with Disabilities**

The flexible arrangements we describe as “telework” are governed by the telework laws, i.e., Public Law 106-346, § 359 (2000); Public Law 108-199, Division B, § 627 (2004); Public Law 108-447, Division B, § 622 (2004); and, most recently, Public Law 111-292 (the Telework Enhancement Act of 2010). Although an agency with a robust, well-functioning telework policy may find that such a policy also enhances the agency’s ability to grant reasonable accommodations that work well for the agency and the persons with disabilities who request them alike, it is important that requests to telework be analyzed and evaluated under their appropriate scheme, i.e., the telework laws and that requests for reasonable accommodations be analyzed and evaluated under the statutory framework that applies to them.

Reasonable accommodations are governed by Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), *as amended*, 29 U.S.C. § 791 *et seq.*, which was made applicable to Federal employees pursuant to the Americans with Disabilities Act. The Rehabilitation Act requires Federal employers to provide requested “reasonable accommodations” to employees with disabilities, unless to do so would cause an “undue hardship.” The determination as to whether an employee may be granted the accommodation requested should be made through a flexible “interactive process” between the employer and the employee. Executive Order 13164, *Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation*, requires all Federal agencies to develop a Reasonable Accommodation Policy. Therefore, agencies should refer to their Reasonable Accommodation Policy when considering reasonable accommodation requests. For example, depending upon the facts of a particular accommodation request, an agency that might have determined that a particular position should be ineligible for telework, might be required nevertheless to permit an employee with a disability within the meaning of the Rehabilitation Act to work from home to some degree. For more information on reasonable accommodation and the interactive process, see *The U.S. Equal Employment Opportunity Commission’s (EEOC) Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act*, at <http://www.eeoc.gov/policy/docs/accommodation.html>. The EEOC has also provided guidance that focuses more specifically on the use of work from home as a reasonable accommodation in some circumstances. See the *Equal Employment Opportunity Commission (EEOC) Guidance on Work At Home/Telework as a Reasonable Accommodation*, at [www.eeoc.gov/facts/telework.html](http://www.eeoc.gov/facts/telework.html), for more information.

**It is important to distinguish between ordinary requests to telework and requests from persons with disabilities for reasonable accommodations and to know which is being requested in any given situation before attempting to analyze the request. If there is any ambiguity about what is being requested, managers and supervisors should clarify that ambiguity at the outset. It is often very fruitful for agency managers and supervisors to consult with the agency’s reasonable accommodation manager and/or the agency’s counsel as part of the interactive process established by the Rehabilitation Act, in order to fully understand managers’ and supervisors’ responsibilities under the law.**

Reasonable Accommodation Financial Resources - The Department of Defense's Computer/Electronic Accommodations Program (CAP) supports agency reasonable accommodation processes by providing services and accommodations for employees with disabilities who work from home as a form of reasonable accommodation.

CAP's support includes evaluating the needs of employees with disabilities and purchasing the assistive devices and technology necessary to effectively complete their duties, whether on site or under a reasonable accommodation to work from home. This also serves as a retention strategy and reduces disability retirement costs and actions. For more information, contact CAP at [www.tricare.mil/cap](http://www.tricare.mil/cap).

In addition, the Government-funded Job Accommodation Network (JAN) is a free service that offers employers and individuals ideas about effective accommodations. The counselors perform individualized searches for workplace accommodations based on a job's functional requirements, the functional limitations of the individual, environmental factors, and other pertinent information. JAN can be reached at 1-800-526-7234 (voice or TDD); or at [www.jan.wvu.edu/soar](http://www.jan.wvu.edu/soar).

## **Conclusion**

This is an exciting time for Federal telework! By following the guidance in this document, agencies, managers, supervisors, and employees will be ahead of the game in improving their understanding and implementation of telework. The success realized through the widespread use of this important workplace flexibility will contribute to a more efficient, effective and resilient Federal workforce, and to the achievement of our ultimate objective of better service to our Nation.

## **REFERENCES**

### **TELEWORK (GENERAL)**

Telework Central Website (OPM in partnership with GSA)  
[www.telework.gov](http://www.telework.gov)

GSA Telework Information  
[www.gsa.gov/portal/category/21272](http://www.gsa.gov/portal/category/21272)

### **WORKPLACE FLEXIBILITIES**

White House Workplace Flexibility Report  
[www.whitehouse.gov/files/documents/100331-cea-economics-workplace-flexibility.pdf](http://www.whitehouse.gov/files/documents/100331-cea-economics-workplace-flexibility.pdf)

Work Schedules and Workplace Flexibilities (OPM Information)  
[www.opm.gov/oca/worksch/INDEX.asp](http://www.opm.gov/oca/worksch/INDEX.asp)

### **TELEWORK LEGISLATION, REPORTS AND STUDIES**

Legislation  
[www.telework.gov/guidance\\_and\\_legislation/telework\\_legislation/index.aspx](http://www.telework.gov/guidance_and_legislation/telework_legislation/index.aspx)

Reports and Studies  
[www.telework.gov/reports\\_and\\_studies/index.aspx](http://www.telework.gov/reports_and_studies/index.aspx)

### **TELEWORK TRAINING**

Training (OPM Telework 101)  
[www.telework.gov/tools\\_and\\_resources/training/index.aspx](http://www.telework.gov/tools_and_resources/training/index.aspx)

Training (OPM Eastern and Western Management Development Centers)  
<https://www.leadership.opm.gov>

### **PERFORMANCE MANAGEMENT**

Performance Management  
[www.opm.gov/perform](http://www.opm.gov/perform)

### **RECORDS MANAGEMENT**

National Archives and Records Administration's FAQs  
<http://www.archives.gov/faqs/>

## **REFERENCES (continued)**

### **PAY AND LEAVE ADMINISTRATION**

Pay Administration, Premium Pay and Work Scheduling

[www.opm.gov/oca/pay/HTML/factindx.asp](http://www.opm.gov/oca/pay/HTML/factindx.asp)

Unscheduled Telework

[www.opm.gov/oca/compmemo/dismissal.pdf](http://www.opm.gov/oca/compmemo/dismissal.pdf)

### **ACCOMMODATIONS FOR EMPLOYEES WITH DISABILITIES**

EEOC Enforcement Guidance

[www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html)

EEOC on Telework and Work at Home

[www.eeoc.gov/facts/telework.html](http://www.eeoc.gov/facts/telework.html)

Computer/Electronic Accommodations Program (CAP)

<http://cap.tricare.mil>

Job Accommodation Network

<http://askjan.org>

**SAFETY (OMB, DHS and NIST)**

<http://csrc.nist.gov/telework>

### **TELEWORK AND EMERGENCY PLANNING**

FEMA COOP Information

[www.fema.gov/about/org/ncp/coop](http://www.fema.gov/about/org/ncp/coop)

Federal Continuity Directive (FCD) 1

[www.fema.gov/about/org/ncp/coop/planning.shtm](http://www.fema.gov/about/org/ncp/coop/planning.shtm)

OPM Pandemic Planning Information

[www.opm.gov/pandemic](http://www.opm.gov/pandemic)



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
Employee Services  
Work/Life/Wellness  
1900 E Street, NW  
Washington, DC 20415

# Collective Bargaining Agreement

Between



Federal Emergency Management Agency (FEMA)

And

American Federation of Government Employees  
(AFGE)

Council 56

Agreement Date: December 5, 2016

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## **ARTICLE 1: RECOGNITION AND COVERAGE**

### **SECTION 1. PREAMBLE**

This Agreement is entered into, by and between the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), and American Federation of Government Employees (AFGE), AFL-CIO. Collectively, FEMA and AFGE shall hereafter be referred to as "the Parties." This Agreement constitutes a Collective Bargaining Agreement between the Agency and the Union.

### **SECTION 2. COOPERATIVE RELATIONSHIP**

The Agency and the Union agree that a constructive and cooperative working relationship between labor and management is essential to achieving the Agency's mission and to ensuring a quality work environment for employees. The parties further recognize that this relationship must be built on a solid foundation of trust, mutual respect, and shared responsibility for organizational success. The parties therefore agree to work together to identify problems and craft solutions, enhance productivity, and deliver the best quality of federal disaster assistance services and resources to the nation.

### **SECTION 3. EXCLUSIVE REPRESENTATION**

- A. The Federal Emergency Management Agency (hereafter referred to as the "Agency," or "FEMA" or "management") recognizes the American Federation of Government Employees, National Council 56, (hereafter referred to as the "Union" or "Council") as the exclusive representative of employees identified by the Federal Labor Relations Authority in Case No. WA-RP-13-0055. As the exclusive representative of the employees in the unit, the Union is entitled to act for and represent the interests of all employees in the unit.
- B. It is understood that the Union reserves the right to delegate authority to a Local representative to negotiate on behalf of the Union with the Agency. This includes negotiations on Regional or facility-specific issues.
- C. In the event the Union desires to address Regional or facility-specific issues, those issues must be brought forward by the Council President or Vice President and presented to the FEMA Labor Relations Officer (or designee). In the event the Agency desires to address Regional or facility-specific issues, those issues must be brought forward by the FEMA Labor Relations Officer (or designee) and presented to the Council President or Vice President.

### **SECTION 4. COVERAGE**

This Collective Bargaining Agreement covers bargaining unit employees described as "Included" in the nine geographic unit descriptions in FLRA Case No. WA-RP-13-0055. If the Union requests certification to include additional employees in the unit, and the FLRA decides to amend, clarify, or change the unit to include the additional employees, the additional employees will automatically be covered by this Agreement. The unit descriptions are as follows:

### **Region II, New York, New York**

- Included: All full-time and part-time permanent employees and all nonprofessional CORE employees employed by Region II, Federal Emergency Management Agency.
- Excluded: All other temporary employees; employees in the position of Public Affairs Specialist, GS-1035-12/13; management officials; supervisors; and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

### **Region III, Philadelphia, Pennsylvania**

- Included: All non-professional permanent full-time and part-time employees of the Federal Emergency Management Agency, Region III, Philadelphia, Pennsylvania.
- Excluded: All temporary employees, including all employees appointed under the Stafford Act, and all professional employees, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

### **Region IV, Atlanta, Georgia**

- Included: All professional and non-professional, full-time and part-time permanent employees employed by Region IV Atlanta, and located in Thomasville, Georgia and Atlanta, Georgia.
- Excluded: Management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

### **Region V, Chicago, Illinois**

- Included: All professional and non-professional employees of the Federal Emergency Management Agency, Region V, Chicago, Illinois.
- Excluded: All management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

### **Region VII, Kansas City, Missouri**

- Included: All professional and non-professional employees of the Federal Emergency Management Agency, Region VII, Kansas, City, Missouri.
- Excluded: Disaster Assistance Employees (DAE); management officials; supervisors; and employees described in 5 USC 7112(b)(2), (3), (4), (6), and (7).

### **Region IX, San Francisco, California**

- Included: All professional and non-professional general schedule employees of the Federal Emergency Management Agency, Region 9.
- Excluded: Temporary employees; management officials; supervisors; and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

### **FEMA Headquarters**

- Included: All professional and nonprofessional General Schedule and Wage Grade employees employed by Headquarters Federal Emergency Management

- Agency, including employees stationed outside the Washington, D.C. Metropolitan Area who are assigned to Headquarters.
- Excluded:** All management officials, supervisors, part-time employees, temporary employees, management interns, professional general schedule employees of the software Design and Engineering Division, Operations and Support Directorate located in Charlottesville, Virginia, all other employees represented by any other labor organization, and employees described in Section 7112(b)(2), (3), (4), (6), and (7) of the Statute.

**Emmitsburg, Maryland**

- Included:** All professional and nonprofessional employees employed by the Department of Homeland Security, Federal Emergency Management Agency and whose duty station is at the National Emergency Training Center in Emmitsburg, Maryland.
- Excluded:** All management officials, supervisors, employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7), and temporary employees with less than 90 day appointments.

**Mt. Weather, Virginia**

- Included:** All nonsupervisory GS, WG, and WAE's non-professional employees employed by the Federal Emergency Management Agency located at the Special Facility; employees located at the four field offices under the Office of Operations Support, Systems Operations Division; employees of the Office of Operations Support, Computer Services Division and Systems Development Division located at Charlottesville, VA; and employees of the Office of Operations Support, Computer Model Division, Resource Data Base Branch and the Vulnerabilities Analysis Branch located at the Central Office, Federal Emergency Management Agency.
- Excluded:** Supervisors, management officials, temporary employees with no reasonable expectancy of continued employment, and employees described in 5 USC 7112(b)(2), (3), (4), (6), and (7).

## **ARTICLE 2: GENERAL PROVISIONS**

### **SECTION 1. RELATIONSHIP TO LAWS AND GOVERNMENT-WIDE RULES AND REGULATIONS**

- A. In the administration of all matters covered by this Agreement, the Parties shall be governed by existing and future laws, Government wide rules and regulations in effect on the date this Agreement becomes effective, and by subsequently enacted government-wide rules and regulations implementing 5 U.S.C. § 2302. Should any conflict arise between this Agreement and any such laws or regulations, the provisions of such laws or regulations shall supersede conflicting provisions of this Agreement.
- B. Any DHS or FEMA directives or policies in effect as of the effective date of this Agreement govern the working conditions of the Parties, unless it conflicts with the terms of this Agreement.

### **SECTION 2. PAST PRACTICES**

- A. Past practices that conflict with law, government wide rule or regulation or this Agreement shall terminate upon the effective date of this Agreement.
- B. In order to change any past practices that are not in conflict with law, government wide rule or regulation or this Agreement, the Agency or Union shall provide notice and, upon request, bargain with the other party to the extent required under the Statute and in accordance with the mid-term bargaining provisions of this Agreement.

### **SECTION 3. OTHER AGREEMENTS**

All previously negotiated agreements and understandings (MOAs and MOUs) between the Parties which were in effect prior to this Agreement at any level shall automatically expire upon the effective date of this Agreement unless expressly identified and incorporated in this Agreement.

### **SECTION 4. SEVERABILITY**

Should any part of this Agreement or any provisions contained herein be rendered or declared invalid by reason of any changes in law, government wide rules or regulations, or court order, such provision or provisions may be severed from the rest of this Agreement, which shall remain in full force and effect.

### **SECTION 5. FEMA INSTRUCTIONS, POLICIES, AND MANUALS**

- A. Copies of all FEMA Instructions, Policies, and Manuals will be accessible to employees on line via the [FEMA Intranet](#).
- B. Wherever a FEMA instruction, policy, or manual is referenced in this Agreement, it shall only apply to the bargaining unit members identified in the Applicability and Scope section of the cited instruction, policy, or manual.
- C. Before a change to any FEMA instruction, policy, or manual in effect on the effective date of this Agreement, or a new instruction, policy, or manual will be applicable to

bargaining unit members, the Agency shall provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement. Any agreement reached between the Parties on the changed or new instruction, policy, or manual will be incorporated as a modified article or an Appendix to this Agreement or memorialized in a Memorandum of Agreement (MOA).

- D. The Agency will ensure that any electronic links in this Agreement are functional. If there is a problem with a link, please contact Enterprise Service Desk (ESD) at [FEMA-Enterprise-Service-Desk@fema.dhs.gov](mailto:FEMA-Enterprise-Service-Desk@fema.dhs.gov) and the FEMA Labor Relations Officer.

## **SECTION 6. DEFINITIONS**

“Days” means calendar days, unless otherwise specified.

“Employee” means bargaining unit employee, unless otherwise specified.

“Position” means bargaining unit position, unless otherwise specified.

## **ARTICLE 3: CADRE OF ON-CALL RESPONSE/RECOVERY EMPLOYEES**

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 252-11-1, Cadre of On-Call Response/Recovery Employee \(CORE\) Program](#), dated 8/25/2015, except as otherwise provided in this Agreement.
- B. FEMA's most valuable resource is its workforce; both permanent and temporary employees who are focused on and committed to prepare for, prevent, respond to, and recover from all-hazards incidents. FEMA relies upon its temporary personnel, in particular, to carry out its role in incident management and support operations and to augment FEMA's permanent workforce.

### **SECTION 2. APPOINTMENTS**

- A. COREs are hired under a Stafford Act appointment authority and their salaries and benefits are funded by the DRF, thus the scope of their duties must predominately carryout Stafford Act activities.
- B. Individuals appointed to CORE positions are normally given time-limited appointments for a period of not less than two years (unless otherwise justified for less than two years based on workload analyses) but not to exceed four years, unless the appointment is renewed for another term.
- C. A CORE appointment does not confer eligibility or priority consideration for a permanent appointment.
- D. COREs must be ready to deploy wherever FEMA needs their services and have 24 hours to respond to a deployment order and may be required to work long hours under stressful and unfavorable conditions.
- E. All CORE appointees are required to sign a Conditions of Employment (COE) statement upon appointment, and upon renewal of an appointment. COEs contain significant, but not all of, the DHS/FEMA and other rules and regulations that COREs must abide by.
- F. CORE employees will be given at least 30 days' notice in writing if their appointment will not be renewed.

### **SECTION 3. ELIGIBILITY FOR RECRUITMENT, RELOCATION, OR RETENTION INCENTIVES**

- A. In order to enhance the recruitment and retention of COREs, the following incentives may be provided to COREs at the discretion of management:
  1. Recruitment Incentive. A recruitment incentive is a one-time, lump-sum payment to a newly appointed CORE to a position that is determined to be critical to FEMA's mission and in the absence of the incentive, would be difficult

- to fill.
2. Relocation Incentive. A relocation incentive is a one-time, lump-sum payment to a current CORE who agrees to relocate with no break in service to accept a FEMA position in a different geographic area if the position is likely to be difficult to fill in the absence of the incentive.
  3. Retention Incentive. A retention incentive is paid to a current CORE if the CORE has unusually high or unique qualifications, or an Office or Directorate has a special need for the CORE's services that makes it essential to retain the CORE, and the CORE would likely leave the Federal service in the absence of a retention incentive.
- B. The use of a recruitment, relocation, or retention incentive is not to be used as a substitute for traditional recruiting efforts that could yield a competent and qualified employee without the use of such an incentive.

#### **SECTION 4. MERIT-BASED INCREASES UNDER PAY BANDS**

- A. A CORE who is not already receiving the maximum basic pay for his or her position may receive a merit-based increase at the conclusion of the performance year.
- B. A CORE must receive at least a rating of record of "Achieved Expectations" or equivalent to be eligible for a merit-based increase.

#### **SECTION 5. STEP INCREASES UNDER GRADES AND STEP**

- A. A CORE who is not already at the highest step of his or her current grade may be advanced to the next higher step at the conclusion of the waiting period assigned to their current rate.
  1. While FEMA's Stafford Act authorities permit FEMA the authority to compensate without regard to Title 5, FEMA agrees to adopt the waiting periods for advancement to the next highest step established by 5 U.S.C. § 5335 and its implementing regulation at 5 C.F.R. § 531.405 as a matter of policy for all COREs paid via grades and steps.
  2. A CORE is not automatically entitled to receive a step increase at the conclusion of his or her waiting period. To receive the step increase, the CORE's supervisor of record must certify that the CORE:
    - a. Has completed the requisite waiting period;
    - b. Has not received an equivalent increase during the waiting period; and
    - c. His or her summary rating level for the most recent performance was at least "Achieved Expectations" or equivalent.
  3. If a supervisor determines that a CORE's performance is not at an acceptable level, the CORE will receive a notification stating that the CORE's next step increase is being withheld, the reason for the negative determination, and what the CORE must do to improve his or her performance to be granted the step increase. The notification will include a notice that bargaining unit employees can consult with a Union representative.
- B. Prior to the completion of the requisite waiting period, a supervisor may recommend one

additional step increase if warranted by the CORE's performance.

## **SECTION 6. BENEFITS AVAILABLE TO CORES**

- A. With certain exceptions that apply to individuals such as reemployed annuitants, COREs are eligible for the following benefits:
  1. Federal Employees Health Benefits (FEHB),
  2. Federal Employees Dental/Vision Insurance Program (FEDVIP),
  3. Federal Employees Group Life Insurance (FEGLI),
  4. Federal Employees Retirement System (FERS),
  5. Flexible Spending Account (FSA),
  6. Federal Long Term Care Insurance (FLTCIP), and,
  7. The Thrift Savings Plan (TSP).
- B. COREs must review their benefit options and make selections within prescribed election periods. The Agency will provide timely information to COREs with regard to available benefit options, election periods, and technical direction regarding how to apply for these options.
- C. Employee Assistance Program -- COREs have access to confidential work life enhancement services through the EAP, free of charge. The EAP is a professional resource available to help COREs resolve life challenges. EAP information will be posted on the FEMA intranet site.
- D. Transit Subsidy -- Subject to the availability of funds, all COREs who are currently using public transportation to commute to work are eligible for transit subsidy benefits. COREs interested in receiving a transit subsidy must complete [FEMA Form 254-1-1, Public Transportation Benefit Program Application](#), and email it to the Transit Subsidy Program at [FEMA-Transit-Subsidy@fema.dhs.gov](mailto:FEMA-Transit-Subsidy@fema.dhs.gov).
- E. Awards & Recognition -- The Awards and Recognition program applicable to Title 5 employees and captured in FEMA Manual 255-4-1 is also applicable to COREs, with the exception of CORE-Is. Awards and recognition policy applicable to CORE-I IMATs is found in FD 010-7, Incident Management Assistance Team (IMAT) Program Directive.
- F. Absence & Leave -- FEMA administratively applies the FEMA Absence and Leave Policy to COREs, with the exception of CORE-Is, whose absence and leave policies are governed by FD 010-7, Incident Management Assistance Team (IMAT) Program Directive.

## **SECTION 7. TELEWORK**

FM 123-9-1, Telework Manual, applies to all COREs. To establish a telework agreement a CORE must submit a copy of [FEMA Form 123-9- 0-1, Telework Application and Agreement Form](#), and [FEMA Form 123-9-0-2, Employee Self-Certification Safety and Health Checklist](#), to his or her supervisor of record for approval.

## **SECTION 8. MISCONDUCT & POOR PERFORMANCE**

- A. COREs are non-Title 5 employees and therefore normally do not have appeal rights to the Merit Systems Protection Board.
- B. COREs included within the bargaining unit have the right to grieve reprimands, suspensions, and annual appraisal (rating of record) following the procedures outlined in the Grievance and Arbitration Articles of this Agreement.
- C. COREs are not placed on formal Performance Improvement Plans (PIPs).
- D. When deployed to a disaster for twenty days or more, a CORE qualified in a FQS position, and deployed to that position, will receive an evaluation of the CORE's deployment performance. This deployment evaluation may be considered by the CORE's supervisor of record when completing a CORE's progress review and annual appraisal (rating of record).

## **SECTION 9. ALLEGATIONS OF DISCRIMINATION**

If a CORE wishes to raise allegations of discrimination, he or she may contact the Office of Equal Rights for appropriate guidance on the EEO complaint process or file a grievance following the procedures outlined in the Grievance Article.

## **SECTION 10. RIGHTSIZING**

- A. Although COREs are not subject to any statutory or regulatory protection afforded by reduction-in-force provisions, COREs covered by this Agreement are covered by rightsizing protections of this Section.
- B. When FEMA requires reductions in staff levels in one or more functional areas due to a lack of work or funding, FEMA may conduct a rightsizing of its CORE workforce. A rightsizing may occur when the Agency anticipates needing fewer positions through the annual workload analysis and staffing plan process, or if an immediate need to reduce positions or workload is realized between annual workload analyses.
- C. Rightsizing results in termination of appointment prior to the expiration date of an appointment, unless the CORE is selected for or is reassigned to another vacant position in FEMA.
- D. FEMA will issue both general and specific notice of upcoming rightsizing efforts that will affect COREs.
  1. General Advance Notice. COREs will be given a 30 calendar day advance official notification concerning decisions which may result in their being affected by a rightsizing effort. This notification will be in writing and will include: the reasons for the rightsizing effort, such as lack of work or funds, reorganization, or a realignment of functions; and, whom to contact about assistance available for affected employees.
  2. Specific Notice. Specific written notice of separation will be issued to individual affected COREs prior to the proposed date of their release. FEMA's goal is to

provide notice no less than 30 calendar days from their date of release unless extenuating circumstances dictate a shorter notice period.

## **ARTICLE 4: EMPLOYEE RIGHTS**

### **SECTION 1. GENERAL**

- A. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, Union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age, or non-disqualifying handicapping conditions irrespective of the work performed or grade assigned. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that the Agency will endeavor to establish working conditions that are conducive to enhancing and improving employee morale and efficiency.
- B. Recognizing that productivity is enhanced when morale is high, managers, supervisors, Union representatives, and employees shall endeavor to treat one another with respect and dignity.
- C. An employee who exercises any statutory or contractual right shall not be subjected to reprisal or retaliation, and shall be treated fairly and equitably.
- D. All Agency employees may give suggestions and ideas to make the Agency a better workplace and enable the Agency to better serve the public.

### **SECTION 2. PERSONAL RIGHTS**

Employees shall have the right to direct and fully pursue their private lives and exercise their constitutional rights and personal beliefs without interference, coercion, retaliation or discrimination by the Agency so long as such activities do not conflict with job responsibilities or applicable laws.

### **SECTION 3. RIGHTS TO UNION MEMBERSHIP AND REPRESENTATION**

Pursuant to 5 USC 7102, employees covered by this Agreement shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

### **SECTION 4. RIGHT TO DISCUSS REPRESENTATIONAL MATTERS**

- A. If an employee wishes to discuss a representational matter with a Union representative on duty time, the employee shall submit an advanced written request to his/her manager to be released from duty. The request must specify the time it will take to hold the discussion, identify the Union representative and location.
- B. If the discussion will take place away from the worksite, the employee shall identify the location where he/she can be contacted.
- C. The manager (his/her designee or second-line manager, in the event of the absence of the manager) will release the employee from duty unless the manager determines that the presence of the employee at the worksite is necessary to meet current or immediate work requirements.

## **SECTION 5. INVESTIGATORY EXAMINATIONS (WEINGARTEN)**

- A. In accordance with 5 U.S.C. § 7114(a)(2)(B), the Agency will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. The employee requests representation.
- B. Not every management initiated discussion is an investigatory interview that triggers an employee's "*Weingarten*" rights. For example, a supervisor may:
  - 1. Talk to an employee about the proper way to perform an assignment;
  - 2. Conduct a performance evaluation;
  - 3. Issue a verbal warning; or
  - 4. Deliver a decision already made.
- C. An employee may invoke "*Weingarten*" rights (i.e., request that a Union representative be present) when the employee reasonably believes that an investigatory interview is likely to result in disciplinary action. After the employee makes a request for Union representation, the manager can:
  - 1. Grant the employee's request for a Union representative, and wait a reasonable amount of time for the Union representative to arrive;
  - 2. Deny the employee's request for a Union representative, and end the meeting immediately; or
  - 3. Give the employee the choice of either:
    - a. Ending the meeting or
    - b. Continuing the meeting without Union representation.
- D. The Agency will post an annual notice of "*Weingarten*" rights on its Intranet site.

## **SECTION 6. INFORMATION REQUESTS**

All requests for data or information pursuant to 5 USC 7114 must be submitted to the FEMA Labor Relations Officer (or designee) in writing from the Council President or Union representative previously designated by each Local. Each Local may designate up to 2 Union representatives for this purpose. The Agency will provide the requested information within 30 days of receipt unless the Agency demonstrates a good faith basis for requiring more time, in which case the parties will mutually agree on a date by which the information will be provided.

## **SECTION 7. UNION REPRESENTATION AT FORMAL DISCUSSIONS**

The Union will be given the opportunity to be represented at all formal discussions as defined in 5 U.S.C. § 7114(a)(2)(A). The Agency will notify the Union as far in advance of the formal discussion as is reasonably possible under the circumstances. After notification, the Union will inform the Agency if a Union representative will attend and provide the name of the designated Union representative. Failure to designate a Union representative in advance does not preclude a Union representative from participating in the meeting. If a representative does attend, the Union representative will introduce themselves to the person(s) running the meeting prior to the

start of the meeting. If requested, the Union representative will be provided an opportunity to introduce themselves at the start of the formal discussion. The Union representative will be given an opportunity to participate in the meeting. When participating as a representative of the Union, the Union representative will announce that they are speaking on behalf of the Union. However, the Union representative will not interfere with or disrupt the meeting or its purpose. The Agency is under no obligation to delay the start of the meeting if the Union representative is not present.

## **SECTION 8. WHISTLEBLOWER PROTECTION**

In accordance with 5 U.S.C. § 2302(b)(8) and the Whistleblowers Enhancement Act of 2012, employees will be protected against reprisal for the disclosure of information which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

## **SECTION 9. WARRANTS AND SUBPOENAS**

If an employee is served with a warrant or subpoena, it will be done in private to the extent the Agency has knowledge of and can exercise control over the service.

## **SECTION 10. UNLAWFUL ORDERS**

An employee has the right to refuse orders that would require the employee to violate an applicable law. The employee will promptly bring his/her specific concerns to the supervisor or appropriate Agency official. The Agency official will consider the employee's concern and promptly notify the employee whether the order is lawful or unlawful. If the employee raises their concern in writing the Agency will provide a written response clarifying the order and an opinion regarding the legality of the order. If circumstances do not permit this request and response to be done prior to carrying out the order it may be done as soon as practical thereafter. Refusal to obey an unlawful order will not subject the employee to disciplinary or adverse action. Refusal to obey a lawful order may subject the employee to disciplinary or adverse action.

## **SECTION 11. COMPENSATION**

- A. All employees are entitled to timely receipt of all wages earned in accordance with government-wide regulations. Employees are responsible for reviewing their leave and earnings statements in WebTA or the Employee Personal Page (myEPP) and notifying their managers of any unexplained changes or irregularities.
- B. All employees are required to use direct deposit for salary payment unless the employee meets the requirements for waiver under 31 C.F.R. § 208.
- C. Employees who do not receive timely wages may request special salary pay. If appropriate, a special pay payment will be issued promptly after notification by the employee to the Agency's Human Resources Office at FEMA-HC-Payroll@fema.dhs.gov. Obtaining a special pay payment under false pretenses may serve as the basis for disciplinary action.

## **SECTION 12. PUBLIC SAFETY OFFICER BENEFIT PROGRAM**

The [Public Safety Officer Benefit Program](#) (administered by the Department of Justice) provides death and education benefits to survivors of fallen law enforcement officers, firefighters, and other first responders, as well as disability benefits to officers catastrophically injured in the line of duty. The Agency shall make available to all employees information describing the PSOB program and contact information.

## **SECTION 13. VOLUNTARY ACTIVITIES**

Employee participation in the Combined Federal Campaign, Blood Donor Drives, or other worthy projects will be on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to participate. Participation or nonparticipation will not advantage or disadvantage employees.

## **SECTION 14. RETIREMENT**

- A. An employee's decision to resign or retire will be made freely and in accordance with applicable law and Government-wide rule or regulation. The Agency agrees to provide retirement seminars, free of charge, to employees who are within five (5) years of retirement eligibility. Employees also will not be required to take leave to attend these Agency-sponsored seminars and are authorized to attend no more than one in a 12-month period.
- B. If an Agency on-site retirement seminar is not being offered in a given calendar year, or an employee for legitimate reasons is not able to attend an Agency offered on-site seminar in the calendar year, the employee may attend a local federally-sponsored retirement seminar without charge to leave. Any cost of that seminar will be at the expense of the employee. Managerial approval is required and will be based on workload exigencies.
- C. For planning purposes, employees who are eligible for retirement are encouraged to inform their managers as early as possible regarding their anticipated date of retirement; however, the parties understand that an employee's decisions regarding retirement are subject to change at the sole discretion of the employee.
- D. An employee may request to withdraw a retirement application at any time prior to its effective date. However, an employee may not withdraw a retirement application after the effective date.
- E. Badge and Credential upon Retirement for Police Officers
  1. A Mount Weather Police Officer separating from service as a qualified retired law enforcement officer, as defined in the Law Enforcement Officers Safety Act (LEOSA), may request a retirement police credential in accordance with LEOSA. All costs associated with the retirement badge are to be paid by the employee or other private funds and may not be charged to FEMA funds.
  2. The following criteria must be met by retiring officers in order to be considered in good standing:

- a. Officer is retiring after serving as a law enforcement officer for at least 10 years or for medical reasons (e.g. disability retirement) after completing any applicable probationary period;
  - b. Officer is eligible to receive retirement benefits upon retirement; and
  - c. Officer was not terminated.
3. Eligible retiring officers requesting a retirement badge must submit a written request through the chain of command to the Chief of Police along with funding, no later than 90 days prior to the officer's retirement date.

## **SECTION 15. SENIORITY**

Seniority will be defined as an employee's service computation date (SCD) as shown on their most recent USDA FORM AD-334 "Statement of Earnings and Leave." If the SCD's are the same, the higher numeral in the SSN will be used as a tiebreaker, starting with the first digit (if the first digits in two SSN's are 8 and 6, 8 gets preference).

## **SECTION 16. PROBATIONARY EMPLOYEES**

Employees hired under Title 5, who are in their probationary or trial period, are entitled to all rights contained in this Article, consistent with law and regulation, including but not limited to, the right to Union representation and the right to regular counseling and support from their supervisors.

## **SECTION 17. COUNSELINGS FOR MISCONDUCT/PERFORMANCE**

Misconduct and performance counseling will be conducted privately in such a way to avoid embarrassment to the employees. This principle will help guide the Agency determine who will attend the meetings.

## **SECTION 18: FIREFIGHTER LIVING QUARTERS**

- A. The Agency and the Union recognizes that living quarters in the Fire Stations represent space allocated for rest, recreation, and sleeping for unit employees and normally will not be used as public facilities or for public training.
- B. The Agency agrees to extend the same considerations to the living conditions in the Fire Stations as is extended to other living quarters when utilities and/or appliances break down or need replacing. Maintenance problems will be called to the attention of the on-duty officer who will insure that maintenance is notified. In cases of health and hygiene (e.g. toilet, sink, shower problems), management shall request that maintenance address the problem as an immediate priority.
- C. The Agency recognizes the necessity of providing and maintaining reasonably comfortable living spaces at each station for unit employees on duty, such as air conditioning and heating, and adequate furniture, drapes, or blinds as required. To this end, the Employer agrees to provide and replace as needed the following:
  - 1. Refrigeration for storage of employee's food;
  - 2. Cooking and eating utensils, including, but not limited to: a dishwasher, pots, can openers, coffee maker, toaster, microwave oven, broiler, glasses, plates, bowls, forks, spoons, and knives;

3. Adequate and suitable lounge furniture;
4. Modern multi-media equipment, as required for training and recreational purposes; and
5. Adequate living accommodations.

## **ARTICLE 5: OFFICIAL TIME**

### **SECTION 1. OFFICIAL TIME PURPOSE**

For purposes of this Article, “official time” means time granted by the Agency to employees designated in writing to act as Union representatives, without charge to leave, in accordance with 5 U.S.C. § 7131.

### **SECTION 2. USE OF OFFICIAL TIME.**

Union representatives may use official time to conduct representational functions where such is authorized pursuant to, and consistent with, applicable statutes, regulations, and executive orders relating to complaints, grievances, appeals and other matters involving dealings with Agency officials. The following list is not intended to be all inclusive, but instead is intended to provide examples of situations where official time may be authorized.

#### **A. Representational activities**

1. To prepare for and represent employees in grievances, arbitrations, statutory appeals, investigations, and misconduct and performance actions.
2. To attend formal discussion and investigatory meetings.
3. To prepare a reconsideration statement in connection with the denial of a within-grade increase.
4. To meet with an AFGE National staff representative who has been designated to represent the Union in a grievance, arbitration, or Unfair Labor Practice (ULP) charge and for which the agency is a party.
5. To participate in a Federal Labor Relations Authority investigation or hearing as a representative of the Union when the Agency is a party to the matter.

#### **B. Midterm Negotiation**

1. To meet with Agency officials to discuss changes to conditions of employment.

#### **C. Ongoing Labor Management Relations**

1. To serve on any Agency committees or teams on which there is Union representation.
2. To prepare and maintain records and reports required of the Union by the Agency or by other Federal oversight entity.
3. Engage in communication with the Agency related to the administration of this Agreement.
4. To attend training pursuant to Section 6.
5. To attend any other meeting which the Agency and the Union agree are mutually beneficial.

### **SECTION 3. UNION REPRESENTATIVES**

- A. The Union agrees to provide the Office of the Chief Component Human Capital (OCCHCO) Labor Relations Officer (LRO) with a written listing of its Union representative(s) along with their individual Council and Local union titles no later than 30 days after the effective date of this Agreement. Changes will be submitted to the OCCHCO LRO not less than five (5) workdays prior to the assumption of representational responsibilities by any new representative(s). Each list will include the

name, Union title, local, duty location and telephone number of each designated union representative.

- B. Except where explicitly provided, this Agreement shall not be interpreted in any manner which interferes with the Union's right to designate representatives of its own choosing on any particular representational matter. If the Union utilizes the services of outside counsel or other representative as its representative in a grievance, arbitration, or other dispute, such counsel or other representative is bound by Agency policy, regulation, and this Agreement regarding access to operations, facilities, services and security. Once designated, such counsel shall be viewed by the Agency as having full authority to commit the Union to a course of action unless the Union specifically states otherwise in writing.

#### **SECTION 4. OFFICIAL TIME ALLOCATION**

- A. Union representatives may be authorized reasonable official time deducted from a bank of official time hours to perform functions outlined in this Agreement. A bank of 7,900 hours of official time per calendar year will be made available for all representational duties.
- B. The Council President (and anyone officially designated to act in the role of Council President if the Council President is on leave or otherwise not in a duty status) will be allocated no more than 2080 bank hours per calendar year. No other representative may use more than 1040 bank hours of official time per calendar year.
- C. Use of official time may be authorized provided sufficient representational activities exist, the amount of official time requested is reasonable, and the representative complies with the official time request procedures outlined in Section 5 and Section 6.

#### **SECTION 5. REQUIRED PROCEDURES**

- A. A Union representative planning to use official time will, in advance of such usage, request and receive approval from his or her manager to be released from duty to perform representational duties. Requests shall be submitted via email or electronic system to their immediate supervisor or appropriate management official.
- B. The request must contain:
1. Amount of official time requested;
  2. The date and time official time will be used;
  3. Type of representational activity;
  4. Confirmation that the employee is listed on a bargaining unit list or confirmation from Labor Relations that the employee is a bargaining unit member.
  5. And confirmation that the represented employee's supervisor has been notified, if the meeting will take place during duty hours
- C. The supervisor will promptly consider the request and will grant the request unless the supervisor determines the representative's presence at his/her work site is necessary to meet Agency work requirements. The request will be approved or denied in writing. If

requests are approved, Union representatives will record their official time using WebTA (or successor system). If the supervisor determines the representative's presence is necessary to meet Agency work requirements, the supervisor will ensure that the representative will be granted enough time to find an alternate or identify an alternative mutually agreeable day and time for departure. Notwithstanding the provisions of this section the union representative may be recalled to duty if necessary.

- D. Employee's Supervisory Approval. The Union representative and/or employee involved shall obtain advanced approval of the represented employee's supervisor for any meeting during the employee's duty time.
- E. If there is an issue with advanced approval of official time, the Union or Supervisor may contact FEMA Labor Relations Officer for assistance/guidance.

## **SECTION 6. OFFICIAL TIME FOR TRAINING**

- A. Official time may be authorized for Union representatives to attend training approved by the Agency which is designed to advise representatives on matters within the scope of Civil Service Reform Act of 1978, which are of mutual interest to the Agency and the Union. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances, appeals, FLRA and other third party processes and information related to Federal personnel/labor relations laws, regulations, and procedures.
- B. The request for official time to attend Union sponsored training will be submitted in writing on behalf of the officers/stewards by the Union to the officer/steward's supervisor and the FEMA Labor Relations Officer. The request must be submitted at least 10 days before the date of the training. At a minimum, the request must contain:
  1. Representative's Name;
  2. Official title the employee holds in the Union;
  3. Purpose of the training;
  4. Copy of the agenda, course curriculum, or description of the training session;
  5. Number of hours requested; and
  6. Date(s) the employee is to attend the session.
- C. The request will be approved or denied in writing. If requests are approved, Union representatives will record their official time using WebTA (or successor system). If requests to use official time for union training are denied, union representatives may request to use leave to attend the training.

## **SECTION 7. RESTRICTION ON OFFICIAL TIME**

- A. This Article does not authorize official time during normal duty hours for the following activities:
  1. Internal Union Business. In accordance with 5 U.S.C. § 7131(b), no official time may be expended for any activities performed by employees relating to internal Union business (including the solicitation of membership, election of Union officials, and collection of dues).

2. Leave. Activities for which the employee would normally be required to charge his or her time to annual, sick or other appropriate leave if he or she were not a Union officer (e.g. annual leave for a vacation or sick leave for an illness).
- B. Overtime is not available to Union representatives related to the use of official time.

#### **SECTION 8. TRAVEL AND PER DIEM.**

- A. Any travel or per diem authorized for Union representatives under this Agreement will be paid in accordance with law, rule, and regulation.
- B. Travel and per diem expenses for Union representatives or bargaining unit members when performing representational activities or attending Union-sponsored training shall be borne by the Union or the employee engaged in such activity.
- C. Reasonable and necessary official time from the bank will be authorized for Union representatives for travel to and from any activities included in this Article.

## **ARTICLE 6: FACILITIES AND SERVICES**

### **SECTION 1. PURPOSE**

- A. The purpose of this Article is to provide those facilities and services that are necessary and reasonable for the Union to carry out its legitimate activities as the exclusive representative of the bargaining unit. The Parties recognize that providing such facilities and services furthers their joint interest in promoting effective labor-management relations.
- B. The Union's access to and use of the Agency's facilities and services will not interfere with the mission or operation of the Agency.
- C. Any and all Union communications using Agency communication resources or posted on Agency-provided bulletin boards will not violate the law, advocate violating the law, or contain items relating to partisan political matters and will not malign, disparage or harm the character of any individual or the Agency.
- D. Any and all Union communications using Agency communication resources must not relate to any non-representational matters (e.g., internal union business).

### **SECTION 2. UNION ACCESS TO AGENCY FACILITIES**

- A. When visiting a location other than their assigned area of responsibility, Union representatives shall notify Agency officials of the date and time of the visit sufficiently in advance, but no less than two business days. Union representatives shall not interfere with the work of employees during duty hours.
- B. Meeting Space. Upon reasonable advance request, but no less than two business days, by the Union, the Agency shall provide meeting space, if available, in areas occupied by the Agency. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.
  1. During normal duty hours, confidential meeting space, if available, will be provided for representational duties (e.g. grievances, appeals, caucusing, and agreement administration).
  2. During non-duty hours, space, if available, will be provided for internal union business (e.g. organizing event, elections, solicitation of membership, and collection of dues). These activities will be conducted during break, lunch periods and non-duty hours and shall not interfere with the mission of the Agency.
  3. If the Agency cannot accommodate the visit for valid operational reasons the Agency will make alternative arrangements for the union representative.
- C. Video Teleconferencing (VTC): In addition to using communication programs available on Agency-issued computers, the Union may use the Agency's VTC upon reasonable advance request by the Union, but no less than two business days. The Agency shall provide access to VTC, if available, and no more than once a quarter. The Union will comply with all security and safety rules in effect at that time and place.

1. During normal business hours (Eastern Standard Time), VTC, if available, will be provided for representational duties (e.g. grievances, appeals, caucusing, and agreement administration).
2. Use of VTC will be limited to no more than one hour per use.
3. Use of VTC will be prohibited for internal union business (e.g. elections, solicitation of membership, and collection of dues).

### **SECTION 3. ACCESS TO EMPLOYEES**

- A. AFGE Union representatives shall have reasonable access to unit employees during duty hours as necessary to carry out collective bargaining or representation duties required by 5 U.S.C. § Chapter 71, this Agreement, or urgent circumstances. Prior to meeting with the bargaining unit employees, and no less than 2 business days before, both the Union representative and the employee shall obtain advanced written approval from the employee's supervisor. All meetings will take place at official work sites.
- B. Bargaining Unit List. Upon request, but no more than quarterly, the Agency will furnish to the Union, for its internal use only, an electronic spreadsheet which will contain the names of all employees in the bargaining unit. The Parties recognize that errors may occur from time-to-time in regard to input and coding of data, and that the listings will not be construed as action by the Agency to unilaterally deny bargaining unit status to any employee, or to confer it. The Union or an individual employees may inquire with Labor/Employee Relations regarding an employee's bargaining unit status. The Agency will take steps to correct the Bargaining Unit Status (BUS) codes of employees improperly coded.
- C. New Employee Orientation (NEO)
  1. Two weeks prior to each NEO, the Agency will provide the Union an electronic spreadsheet containing the names, grades, position titles, series and official duty station of all bargaining unit employees scheduled to attend NEO.
  2. The Union will provide each new employee with the name and contact information for a Union representative at their official duty station.
  3. At NEO, the Agency will inform employees of the existence of AFGE Council 56 (Union) and be told that Union briefings will be conducted at the Local level.
  4. Local Union representatives may host a briefing of new employees to provide information about the Union. This briefing will be considered a continuation of NEO and supervisors will allow new employees to attend this briefing. Upon request, Management will identify a room that can be used for this briefing. The briefing will not exceed 30 minutes and no membership solicitation activities will occur.

### **SECTION 4. OFFICE SPACE & EQUIPMENT**

- A. The Agency will continue to provide the Union with one private office located at the FEMA Headquarters building. The Parties agree that Locals will retain current office space provided by the Agency, unless due to transformation to an open workspace environment or facility relocation that directly affects the Local office space, office space will no longer be available. If office space is not available, the Agency will notify the

Union and both parties will meet and discuss options. If an office will not be provided, the Union will be provided a functional designated workspace. The designated workspace will consist of Union designated lockable file cabinet(s), a desk, chairs, and a telephone, for purpose of conducting representational activities for bargaining unit members.

- B. Union representatives will be allowed to make reasonable use of Agency printer, copier, scanner, fax machines and multi-functional devices for representational purposes (e.g. grievances, appeals, and agreement administration).
- C. Union representatives will be allowed to use their FEMA issued computer for Union representational purposes.

## **SECTION 5. ELECTRONIC MAIL**

- A. The Agency will provide Internet access to the Union for representational purposes, consistent with the Agency's IT policies, at individual work stations. The Union representatives who are Agency employees may use the Agency e-mail system to communicate with employees, Agency officials, third party neutrals, and AFGE representatives. The Parties agree that internal Union business (e.g. elections, solicitation of membership, and collections of dues) is prohibited when using government-provided access to the Internet and the Agency e-mail system. Electronic mail messages on the Agency e-mail system are considered government records which may be accessed in accordance with applicable law and policies whenever a legitimate governmental purpose exists for doing so.
- B. Each local and the National Council may each use the Agency's electronic mail system for up to five mass emails per month.
  - 1. Whenever the Union uses Agency e-mail to communicate with employees and Agency officials, the Union will note in the e-mail subject line that the subject of the communication involves "Union Communications."
  - 2. Attachments and links to external sources, are prohibited, but mass emails may contain links to posted internal SharePoint documents.
  - 3. Use of "reply-all" function is prohibited.
- C. Correspondence submitted through the e-mail system satisfies the official notice requirements under this Agreement.

## **SECTION 6. MAIL**

The Agency will provide the Union use of the Agency's internal mail system to transmit or receive representational correspondence. The Union agrees that use of the Agency's internal mail systems will be limited solely to representational matters and will not be used for internal mass mailings or for any internal Union business activities (including the solicitation of membership, election of Union officials, and collection of dues) as set forth in 5 U.S.C. § 7131(b).

## **SECTION 7. SHARE POINT**

- A. The Agency agrees to provide the Union with its own page on the Agency Intranet site for employee information on matters such as Union programs, benefits, and initiatives. The Union “home page” will be identified by an ICON or link on the main Agency Intranet menu/home page.
- B. The Union will have direct access to the Agency Intranet for purposes of uploading or updating information on the Union’s “home page.”
- C. The Union will at least annually provide the Agency the names of its representatives who may authorize and/or upload information to the Union’s home page and will update the list of names as needed.
- D. The information that the Union displays on its home page must comply with this Agreement and DHS and FEMA IT policies.
- E. The Union agrees to furnish a copy of any information scheduled to be posted on the Share Point page to the Agency’s labor relations officer at least 2 weeks in advance prior to posting.

## **SECTION 8. UNION COMMUNICATION**

- A. Where Union bulletin boards are currently provided they will continue to be provided for Union use.
- B. At any facility that does not currently have a Union bulletin board, Union may distribute paper (i.e., hard copy or leaflet) material in Agency facilities in worker accessible non-work areas, such as employee lunch rooms, subject to internal security requirements. All such material will be properly identified as official Union material.
- C. The Union agrees to furnish a copy of any information posted on the bulletin boards or distributed to the Agency labor relations officer at least 1 work day in advance prior to posting.

## **SECTION 9. CONTRACT AVAILABILITY**

- A. The Agency will place the Agreement on the Agency’s Intranet home page and provide the Council President and Local Presidents with a copy of the Agreement in the currently acceptable electronic format.
- B. The Agency will make appropriate arrangements to accommodate visually-impaired employees.
- C. Employees may print copies of the agreement as needed.

## **ARTICLE 7: MANAGEMENT RIGHTS**

### **SECTION 1. GENERAL**

Nothing in this agreement shall affect the authority of management officials as specified in 5 U.S.C. 7106(a):

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency;
- B. To hire, assign, detail, direct, lay off, and retain employees in the Agency; or suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees, in accordance with applicable laws;
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency operations shall be conducted;
- D. With respect to the filling of positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or any other appropriate source; and
- E. To take whatever actions may be necessary to carry out the Agency mission during emergencies.

### **SECTION 2. EMERGENCIES**

The Union recognizes and fully supports the Agency's mission. The Union further recognizes that to accomplish the mission it may be necessary to waive the controlling nature of this Collective Bargaining Agreement during the immediate preparation for, response to, or recovery from a Presidentially declared Major Disaster or Emergency. In the event that a bargaining unit employee is deployed to or affected by a Presidentially declared Major Disaster or Emergency, Management may unilaterally suspend the binding nature of this agreement for a period of time. To effectuate the suspension Management must provide the Union with notice and an estimate of time which the agreement will be suspended.

## **ARTICLE 8: LABOR-MANAGEMENT COOPERATION**

### **SECTION 1. PURPOSE AND SCOPE**

- A. The Parties recognize the importance of working closely together for the purpose of promoting and improving a cooperative relationship by developing meaningful solutions to workplace issues. Consultation is an opportunity for the Union to review, discuss, consider, and make recommendations to the Agency on matters relating to or affecting working conditions, employee morale, and efficiency of the Agency's operations. Therefore, the Agency may provide the Union with briefings and the opportunity to ask questions about matters of interest and concern at the local levels upon Union request.
- B. The parties agree that cooperation and communication should be a major goal of labor-management relations. The desire and intent in this Article therefor is to describe and encourage effective labor-management cooperation. The Agency and the Union are committed to working together at all levels to improve service to the public, ensure a quality work environment for employees, and effect a more efficient administration of FEMA programs.
- C. The Agency shall allow employees and their Union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 USC 7106. The Agency shall provide adequate information on such matters expeditiously to Union representatives where not prohibited by law. The Parties shall make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment.

### **SECTION 2. RESOLVING UNFAIR LABOR PRACTICES**

- A. The Parties recognize the mutual benefit of attempting to resolve disputes prior to filing a formal Unfair Labor Practice (ULP) charge. In order to achieve this objective, the Parties agree that prior to filing with the FLRA, they will work in partnership to address unfair labor practice allegations by bringing the matter to the attention of the other Party and setting a mutually agreed on timeframe to meet, investigate, and address the issue.
- B. If the Union is the Charging Party, the Council President or designee will bring the matter to the attention of the FEMA Labor Relations Officer. If the Charging Party is the Agency, the FEMA Labor Relations Officer will bring the matter to the attention of the Council President or designee.
- C. Nothing in this Section shall replace the statutory right of either party to file a ULP unfair with the Federal Labor Relations Authority.

### **SECTION 3. LABOR MANAGEMENT PARTNERSHIP COUNCIL**

The Parties agree to have a Labor Management Partnership Council governed by the Charter developed by the Parties.

### **SECTION 4. LOCAL PARTNERSHIP MEETINGS**

The parties encourage local partnership meetings for the purpose of promoting and facilitating constructive understanding and cooperative relations at the local level. These meetings are intended to provide an opportunity to consult on personnel policies and practices, other working conditions and mutual concerns, and to engage in joint labor-management training. Agendas will be submitted by the Parties at least 15 days prior to the meetings. Meeting dates and times will be mutually agreed upon. The Union and the Agency will meet in like numbers.

## **SECTION 5. JOINT LABOR – MANAGEMENT RELATIONS TRAINING**

- A. The parties agree that joint Labor-Management Relations (LMR) training is of mutual benefit when it covers appropriate areas (examples are: contract administration, grievance handling and information relating to federal personnel/labor relations laws, regulations, and procedures). Scheduling arrangements for joint training will be determined locally. Agency personnel will be given adequate notice, to include specific agendas, of scheduled LMR training for maximum attendance and work schedules will be adjusted as needed.
- B. The parties will jointly provide Collective Bargaining Agreement training; however, this does not preclude additional training by each party. Any training documents will be prepared jointly.

## **SECTION 6. USE OF TIME**

Use of official time for LMPC and joint training activities will be in accordance with the agreed upon Official Time Article.

## **SECTION 7. EXPENSES**

When the Parties mutually agree that travel is necessary and funding is available, travel in support of LMPC and joint training activities shall be paid by the Agency.

## **ARTICLE 9: IMPACT BARGAINING AND MIDTERM BARGAINING**

### **SECTION 1. PROPOSED CHANGES**

The Parties recognize that from time-to-time during the life of the Agreement, the need will arise for either party to propose changes to Agency personnel policies, practices, and/or working conditions, in accordance with 5 U.S.C. 7106(b)(2-3). This covers proposed changes that might affect all FEMA employees or only employees at a particular Region, location or facility.

### **SECTION 2. NOTICE OF PROPOSED CHANGES**

The Proposing Party shall serve its notice of the proposed change upon the receiving Party at least 14 (fourteen) calendar days in advance of the proposed implementation date. The written notice of the proposed change shall include a brief description of the change and the proposed implementation date. All notices provided for under this Article shall be served upon the AFGE FEMA Council President (or designee) or FEMA Labor Relations Officer (or designee).

### **SECTION 3. DEMAND TO BARGAIN**

If the Receiving Party desires to negotiate the change, it must submit a request to bargain within 7 (seven) calendar days after the notice of the proposed change is served. The demand to bargain must include a request for a briefing and an information request if a briefing or additional information is desired. If the Union submits an information request, the Agency agrees to provide the Union with requested data as required by 5 U.S.C. 7114(b)(4). If the Agency submits an information request, the Union agrees to provide the Agency with information that is relevant and necessary for the Agency to understand the Union's proposed change.

### **SECTION 4. PROPOSALS**

The Receiving Party must submit written bargaining proposals 14 (fourteen) calendar days after its demand to bargain, receiving a briefing, or receiving additional information, whichever is later. The Receiving Party's written bargaining proposals shall designate the Chief Negotiator.

### **SECTION 5. NEGOTIATIONS**

If the Parties are unable to reach immediate agreement on the proposed change, they shall commence negotiations on a mutually agreeable date and site. Absent mutual agreement on a date and site for bargaining, such negotiations shall commence at the FEMA Headquarters Office in Washington, D.C. at 9:00 a.m. on the fourteenth (14<sup>th</sup>) calendar date following the date the Proposing Party received the Receiving Party's proposals. Once negotiations have commenced, the Parties recognize the obligation exists to bargain in good faith and will therefore avoid unnecessary delays. If a break in negotiations is necessary the Parties will agree on a time and date to resume bargaining prior to any recess, whenever practicable. Where there is mutual agreement that the proposed change is a National-level issue, travel and per diem will be paid by the Agency if the proposed change is an Agency-initiated change. The Parties may engage in remote bargaining by mutual agreement.

### **SECTION 6. TIME LIMITS**

All time limits stated above may be extended by mutual consent of the parties involved. Failure to make a timely demand to bargain, timely provide written proposals, or timely meet for

negotiations shall be deemed to constitute acceptance of the changes by the Receiving Party and the Proposing Party may proceed to implement the proposed change.

## **SECTION 7. POST IMPLEMENTATION BARGAINING**

The Parties agree that effective management of the Agency and its resources is a mutual concern. The Parties also agree that on certain occasions, there may be a need for expedited implementation of new policies or practices affecting conditions of employment. Nothing in this Article precludes management and the Union from engaging in post implementation bargaining.

## **SECTION 8. GROUND RULES FOR MIDTERM IMPACT, POST IMPLEMENTATION OR OTHER TYPE OF BARGAINING.**

In addition to the requirements of 5 U.S.C. § 7114(b)(1-3), the following ground rules apply to all bargaining entered into as a result of changes initiated by either Party and any corresponding obligation to bargain over such changes under 5 U.S.C. Chapter 71. These ground rules are intended to supplement the procedure set forth in the Agreement, and may only be changed by mutual consent.

- A. Arrangements. Subject to Section 5 of this Article, Negotiations will be held in a suitable meeting room provided by management. In the event either Party desires to caucus, management will caucus in a different room and will leave the negotiating room to accommodate caucuses by the Union.
- B. Subject to Section 5, the starting date and the daily schedule for negotiations will be established by the Chief Negotiators.
- C. During negotiations, the Chief Negotiator for each Party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed-upon section by mutual consent.
- D. Either team may request a caucus. There is no limit on the number of caucuses which may be held; but either Party shall not caucus more than 4 (four) hours on any given day of negotiations.
- E. Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.
- F. The Union will be authorized the same number of Union representatives, but not less than two (2), as Agency has representatives at the negotiations table. The designated Union negotiators will be on official time in accordance with Article 5, Official Time, for all time spent during the actual negotiations, including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals.
- G. If any proposal is claimed to be non-negotiable by either Party and subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-

negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within 7 (seven) calendar days from when the proposal is declared to be negotiable or the claim that the proposal is non-negotiable is withdrawn.

- H. This procedure does not preclude the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.
- I. All time frames in these ground rules may be modified by mutual consent.
- J. Absent mutual agreement, the alternate work schedules and telework schedules of the Parties' representatives will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed upon hours of negotiations.
- K. No official transcript or electronic recordings will be made during the negotiations; however, each Party may be designated a note taker to keep notes and records during the sessions.
- L. Observers and Subject Matter Experts (SME) shall be permitted in negotiating sessions only by the mutual consent of the Parties. SMEs who are federal employees will be on duty time.
- M. During any bargaining, when either Party has determined that an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the Parties shall once more attempt to resolve any existing impasse items. If such consideration does not resolve impasses, the assistance of the Federal Mediation Conciliation Service may be requested by either party.
- N. Upon reaching an agreement, the parties will execute a Memorandum of Agreement (MOA). The MOA shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner compliant with 5 U.S.C. Chapter 71 and implementing regulations. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

## ARTICLE 10: MERIT PROMOTION

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 253-11-1, Merit Promotion and Internal Placement](#), dated June 23, 2015, except as otherwise provided in this Agreement.
- B. The purpose of this Article is to ensure promotions and other actions, either competitive or noncompetitive, are made on the basis of merit, and are based on systematic and equitable procedures. FEMA Manual 253-11-1 and this Article covers all permanent bargaining unit GS positions in the competitive service, and their Federal Wage System equivalents.
- C. This Article shall be interpreted in accordance with OPM regulations. Nothing in this Article shall in any way abridge the rights of the individual employee under such regulations, specifically, the employee's right to file a complaint.

### **SECTION 2. EXCEPTIONS**

The following actions are exceptions to competitive procedures:

- A. A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to the issuance of a new classification standard or the correction of an initial classification error.
- B. A position change permitted by reduction-in-force procedures.
- C. A promotion without current competition of an employee who was appointed in the competitive service from a civil service register, by direct hire, by noncompetitive appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled. (This is a career ladder promotion, the intent of which must be made a matter of record and documented in the promotion plan, and which requires the employee's current rating of record be "proficient" or higher.)
- D. A promotion resulting from an employee's position being classified at a higher grade based on accretion of duties and responsibilities.
- E. A temporary promotion, or detail to a higher graded position or to a position with known promotion potential of 120 days or less.
- F. Promotion to a grade previously held on a permanent basis in the competitive service from which the employee was separated or demoted for reasons other than performance or conduct.
- G. Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently

holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

- H. Consideration of a candidate not given proper consideration in a competitive promotion action.
- I. Appointments of career Senior Executive Service appointees with competitive service reinstatement eligibility to any position for which they qualify in the competitive service at any grade or salary level, including Senior-Level positions established under 5 C.F.R., Part 319.

### **SECTION 3. AREA OF CONSIDERATION**

The area of consideration should be sufficiently broad to ensure a reasonable number of highly qualified candidates for the position to be filled. Area of consideration determinations must be made prior to announcing the position(s), documented in the merit promotion file, and clearly specified in the vacancy announcement.

### **SECTION 4. VACANCY ANNOUNCEMENTS**

- A. Vacancy announcements will be open for a minimum of five calendar days and posted on [www.USAJOBS.gov](http://www.USAJOBS.gov).
- B. At a minimum, each vacancy announcement must include the following:
  1. Agency name and the announcement number;
  2. Opening and closing dates, including any cut-off dates, if applicable;
  3. Position title, series, grade, bargaining unit status, and salary range;
  4. Duty location and number of vacancies;
  5. Promotion potential, if any;
  6. Principal job duties;
  7. Qualification requirements including any selective factors (if applicable);
  8. Basis for rating, including knowledge, skills, abilities, and/or competencies;
  9. An explanation of how to apply, including a point of contact with a telephone number and email address;
  10. Required application materials (*e.g.*, resume, SF-50, DD-214);
  11. FEMA's definition of "well-qualified," for CTAP and ICTAP;
  12. Equal Employment Opportunity statement;
  13. Reasonable Accommodation Statement;
  14. Privacy Act Notice;
  15. Emergency Assignment Statement that reads as follows: Every FEMA employee has regular and recurring emergency management responsibilities, though not every position requires routine deployment to disaster sites. All positions are subject to recall around the clock for emergency management operations, which may require irregular work hours, work at locations other than the official duty station, and may include duties other than those specified in the employee's official position description. Travel requirements in support of emergency operations may be extensive in nature (weeks to months), with little advance

- notice, and may require employees to relocate to emergency sites with physically austere and operationally challenging conditions; and
16. Other essential information, such as tour of duty, telework eligibility, hazardous conditions, travel required, need for a security clearance, Financial Disclosure Statement requirement, moving expenses being paid/not paid, and managerial/supervisory probationary period requirement.

## **SECTION 5. EVALUATION AND REFERRAL OF CANDIDATES**

A certificate will be issued for each grade level for which the position was advertised and qualified candidates exist.

- A. Merit Promotion Certificate. Up to 15 candidates, with a rating of 85.00 or above and who are solely eligible under competitive procedures, will be referred on a Merit Promotion certificate for any one vacant position. Two additional candidates will be referred for each additional vacancy. Candidates will be referred in alphabetical order by last name.
- B. Non-Competitive Certificate. All qualified candidates that are eligible under special hiring authorities (*e.g.*, Veterans Recruitment Authority, 30 percent or more disabled veterans, Schedule A—appointment of individuals with disabilities, Peace Corps volunteers, etc.) or for non-competitive reinstatement, reassignment, or transfer will be separately referred on a Non-Competitive certificate. Non-competitive eligibles will be referred in alphabetical order by last name.

## **SECTION 6. SELECTION AND NOTIFICATION TO CANDIDATES**

- A. The Agency will notify all candidates of receipt of their application, eligibility and qualifications determination, certification referral, and final status of their application.
- B. Review and Explanation
  - 1. If a vacancy cannot be filled once a list of candidates has been certified for the vacancy, the Agency will give an employee who has made inquiry under this Section the reason why the position was not filled.
  - 2. A vacancy announcement shall not be canceled for the purpose of avoiding conformance with the merit promotion plan or this Agreement.

## **SECTION 7. CAREER LADDER PROMOTION**

- A. Career Ladder promotion is the promotion of an employee without further competition when the competition was held at an earlier stage. Career Ladder promotions are not subject to merit promotion.
- B. When the performance plan is prepared and discussed with the employee at the beginning of the appraisal period, the supervisor will discuss the type of grade-building assignments that may be assigned to the employee during the appraisal year, as well as what the supervisor expects concerning the employee's performance in order to be promoted to the next grade level.

## **SECTION 8. UNION REVIEW OF COMPETITIVE ACTIONS**

- A. An employee who wishes to challenge a competitive action may seek the assistance of the Union in filing a grievance or requesting information on the competitive action. The Union may request information regarding the competitive selection packages pursuant to Article 4, Section 6 Information Requests.
- B. For the purposes of this Article, competitive selection packages include the following (with redactions in accordance with the Privacy Act):
  - 1. SF-50 of Selectee (copy)
  - 2. Referral List (signed and dated by the Selecting Official citing action taken)
  - 3. Employees' Applications
  - 4. Priority Consideration Clearance Report (if applicable)
  - 5. Job Analysis (signed and dated by Selecting Official)(weights redacted)
  - 6. Vacancy Announcement
  - 7. Position Description
  - 8. Request for Personnel Recruit Action

## **SECTION 9. CAREER PATH TOOL**

Upward mobility is geared toward helping employees find opportunities for advancement and make use of resources that can help them on their career path. The Agency will create a web-based tool to enable employees to create personalized career plans that highlight the competencies needed for professional growth, and identify beneficial developmental opportunities. The Agency will update the Union on the development and implementation of the Career Path Tool.

## **ARTICLE 11: POSITION DESCRIPTIONS & CLASSIFICATION**

### **SECTION 1. GENERAL**

The Parties agree to follow the policies and procedures set forth in [FEMA Manual 252-2-1, Positions Management and Classification](#), dated June 19, 2014, except as otherwise provided in this Agreement.

### **SECTION 2. POSITION DESCRIPTIONS**

- A. The Agency shall provide each employee with a current position description which accurately reflects the duties and functions performed by the employee.
- B. A position description does not list every duty an employee may be assigned; but reflects those duties which are series and grade controlling.
- C. Employees who believe that they are performing major duties outside the scope of their position description or that the position description is inaccurate shall raise the discrepancies with their immediate supervisor. If the employee and supervisor cannot resolve the issue, the employee may file a grievance. Upon conclusion of the grievance process, if the employee still believes his or her position description is inaccurate, he or she may submit a written request to OCCHCO that the position be reviewed/audited. Response to request(s) to review/audit the position shall be made in writing to the employee, the employee's supervisor and the organization's administrator.

### **SECTION 3. EMPLOYEE CLASSIFICATION CONCERNS**

- A. Employees who believe their position description accurately represents the work they perform, but believe the title, series and/or grade is incorrect should discuss this with their supervisor.
- B. After discussing the issue with their immediate supervisor, employees may submit a written request to OCCHCO that the position be reviewed/audited. OCCHCO shall provide an initial disposition within 15 calendar days of receiving the requested information from the employee and supervisor and a status report every 30 days thereafter. A response to request(s) to review/audit the position shall be made in writing to the employee, the employee's supervisor, and the organization's administrator.

### **SECTION 4. NOTIFICATION TO EMPLOYEES**

- A. Where classification audits are to be performed, advance notice of three (3) working days shall be provided to employees who are to be interviewed.
- B. The employee's supervisor will provide the employee with a copy of the determination of finding memorandum upon request.
- C. The employee will be counseled by the supervisor and/or OCCHCO of the impact of the determination of finding.

## **SECTION 5. IMPLEMENTATION**

In the event a classification audit would result in a downgrade of any Title V position, the provisions of 5 C.F.R. Part 536, Grade and Pay Retention, will apply.

## **ARTICLE 12: OFFICIAL RECORDS**

### **SECTION 1. OFFICIAL RECORDS AND FILES**

- A. No personnel record may be collected, maintained, or retained except in accordance with law, government-wide regulations, Agency regulations, and this Agreement. All personnel records are confidential and will only be accessed by individuals with an official need to know for the performance of their duties. Official Records must be retained in a secure location.
- B. An employee may request, through their servicing Human Resources Specialist, that a record contained in his/her eOPF be corrected or amended in accordance with 5 U.S.C. § 552a(d)(2) and (3). Such requests must be accompanied with supporting documentation.

### **SECTION 2. ACCESS TO RECORDS**

- A. An employee may access his or her Official Personnel Folder (OPF) through the electronic OPF system (eOPF). The eOPF system is a secure web-based application that is accessible from remote locations. Employees shall have access to their eOPF from their workstations or any other internet connected device. Employees, or their representative(s) designated in writing, may request to receive at no cost copies of personnel records which are not in the eOPF.
- B. Employees will, upon request, be provided access to their own medical records maintained by the Agency. Employees' access to their own medical records maintained by the Agency may be refused only if, in the sole judgment of a health care professional, their disclosure would be harmful to the mental or physical health of the individual. In such cases, the medical record(s) may be released only to an employee's representative designated in writing. There may be instances where the Agency health care official may encourage the release of medical information to another health care professional. Documents containing health information maintained in the Agency's personnel or employment records are not protected by Health Insurance Portability and Accountability Act (HIPAA).
- C. The employee shall have the right to prepare and enter a concise statement of disagreement with any document filed on the left (temporary) side of the eOPF. When the document for which the employee files a statement of disagreement is removed from the eOPF, the statement of disagreement will also be removed. Nothing in this section shall negate an employee's right to grieve any matter.

### **SECTION 3. OUTDATED RECORDS**

All official personnel records shall be purged and information disposed of in accordance with appropriate records control schedules.

### **SECTION 4. SUPERVISORY NOTES**

- A. Supervisory notes and files that are kept on employees and not placed in official files are for the sole use of that supervisor. They are intended only to serve as memory joggers.

- B. If supervisors make a personal decision to keep notes on employees, the notes or files:
  - 1. May not be shared with anyone unless there is an official need to know for the performance of their duties or is being used as part of an official action; and,
  - 2. Must be maintained in secure fashion in order to prevent inappropriate disclosure.
- C. Supervisory notes may only be used to support a disciplinary or adverse action if the notes are made available to the employee or designated representative.

## **ARTICLE 13: TRAINING & CAREER DEVELOPMENT**

### **SECTION 1. GENERAL PROVISIONS**

- A. The Agency and the Union agree that the training and development of employees is of critical importance to carrying out the mission of the Agency and in assisting the Agency to attract and retain a qualified and highly proficient workforce.
- B. The Parties encourage employees to recognize and carry out their individual responsibilities to keep abreast of changes occurring in their fields, crafts, trades, or occupations and to participate in developmental activities in order to perform more effectively in both current and future assignments.
- C. The Agency agrees that when new missions are assigned, new equipment is placed into service, or new procedures are implemented, appropriate training, as determined by the Agency, may be provided to affected employees.
- D. An employee may submit a request for training to their supervisor at any time.

### **SECTION 2. FEMA TRAINING COUNCIL**

- A. The parties agree that the Union may participate with the FEMA Training Council for the purpose of making recommendations regarding training and career development programs. The Union representative will have full participation in all aspects of the FEMA Training Council.
- B. Training issues addressed by the Council may include but will not be limited to the following examples:
  1. Orientation sessions for new employees;
  2. Collective Bargaining Agreement training;
  3. In-service or on-the-job training to improve the employees' capability to perform their current jobs;
  4. Training for career enhancement.

### **SECTION 3. INDIVIDUAL DEVELOPMENT PLANS (IDPS)**

The Agency will encourage career development by providing individual employees the opportunity to develop an IDP for career advancement and job related training. The Agency will assist employees in preparing IDPs, including guidance on the relation of organizational needs to individual career goals. Any employee who wishes to participate in job-related training may be required to develop an IDP.

### **SECTION 4. TRAINING COSTS**

- A. The Agency will pay all expenses, including tuition and travel, in connection with training required by the Agency to perform the duties of an employee's current position or a position to which an employee has been assigned.

- B. Depending upon the availability of funds and training priorities, the Agency will also pay appropriate expenses as needed to increase an employee's knowledge or skills in connection with career growth or advancement opportunities.
- C. When resources for training are limited, approval for training funds will be based on the needs of the Agency and fair criteria that are equitably applied.

## **SECTION 5. REQUIRED TRAINING**

Training required by the Agency will generally be conducted during an employee's regularly scheduled work hours. Employees will be required to attend training to which she/he is assigned. Failure to attend may result in disciplinary action and/or reimbursement of the training funds.

## **SECTION 6. TRAINING INFORMATION**

The Agency will ensure that training opportunities are appropriately communicated via posting to the FEMA intranet site. Upon request, the Agency will advise individual employees of training opportunities that meet identified educational or career objectives.

## **SECTION 7. NOTIFICATION REGARDING TRAINING REQUESTS**

Employees will be notified of approval or disapproval of training requests as soon as possible but in every case prior to the starting date of the training. Should an employee's request for training be disapproved solely for lack of funds, the employee may resubmit a request for training as funds become available. If not selected for training, the employee will be notified in writing of the reasons.

## **SECTION 8. TUITION ASSISTANCE PROGRAM**

The Agency and the Union will work together to explore the possibility of establishing a Tuition Assistance Program to encourage and support the continuing education and training of employees. The Parties will consider budget and staffing implications, and the programs impact on employee recruitment, retention, and overall morale concerns.

## **SECTION 9. STUDENT LOAN REPAYMENT PROGRAM**

The Agency and the Union will work together to explore the possibility of establishing a Student Loan Repayment Program to help FEMA employees repay all or part of outstanding federally insured student loans. The Parties will consider budget and staffing implications, and the programs impact on employee recruitment, retention, and overall morale concerns.

## ARTICLE 14: PERFORMANCE MANAGEMENT

### SECTION 1. GENERAL

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 255-1, FEMA Employee Performance Management Program \(EPMP\)](#), dated February 21, 2013, and [FEMA Manual 3700.2, Employee Performance System](#), dated May 15, 1984, except as otherwise provided in this Agreement.
- B. Information will be posted on the FEMA intranet site explaining key aspects of the performance management process.
- C. A goal of the performance management program is to develop highly skilled employees and a professionally trained workforce, promote and sustain a high-performance culture, and achieve organizational and individual excellence.
- D. The performance management program assists the Agency in:
  - 1. Communicating and clarifying organizational goals;
  - 2. Identifying and addressing developmental needs for individual employees;
  - 3. Assessing and improving individual, team and organizational performance;
  - 4. Developing measures to be used as a basis for recognizing and rewarding accomplishments; and
  - 5. Documenting performance as a basis for appropriate personnel actions.

### SECTION 2. PERFORMANCE MANAGEMENT FOR GENERAL SCHEDULE (GS) AND CORE EMPLOYEES

#### A. Definitions

- 1. ***Critical Element*** – Work assignments or responsibilities of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.
- 2. ***Minimum Period:*** The 90 day period of time during which an employee must perform under an approved performance plan before receiving a rating of record or an interim evaluation.
- 3. ***Performance*** – An employee's accomplishment of assigned work or responsibilities.
- 4. ***Performance Cycle:*** The 12-month time period for reviewing employee performance (also known as an appraisal cycle or rating cycle). The performance cycle begins January 1 and ends December 31.
- 5. ***Performance Plan*** – A written plan that describes the performance expectations (i.e. performance goals, core competencies, and associated performance standard(s)) that are to be met during the performance cycle.
- 6. ***Performance Standard*** – The management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may focus on, for example, factors such as quality, quantity, timeliness, and manner of performance. Performance standards under the Program are described at the “Achieved Expectations” and “Achieved Excellence” levels.

7. ***Progress Review*** – A documented discussion, typically conducted on a quarterly basis, between an employee and the employee’ rating official about the employee’s actual performance as compared to the performance expectations set forth in the employee’ performance plan.
8. ***Rating Official*** – The official, generally the first-level supervisor, who prepares the employee’s performance plan with input from the employee, conducts progress reviews, and prepares any interim evaluations and the final rating of record.
9. ***Rating of Record*** – A written performance appraisal that is prepared at the end of the performance cycle, covering an employee’s performance of assigned duties against performance expectations over the entire performance cycle and includes the assignment of a summary rating level.
10. ***Summary Rating*** – Combining the written appraisals of each critical element (on which there has been an opportunity to perform for the minimum period, i.e., 90 calendar days) in order to assign a summary rating level. The rating official derives the summary rating from appraising the employee’s performance during the appraisal period on each element.

B. Planning and Communicating Performance

1. At the beginning of the performance cycle, a temporary promotion that is expected to last more than 90-days, and upon entry into a new position, a written performance plan shall be developed identifying the specific performance expectations for which the employee will be held accountable.
2. The rating official and the employee will discuss the Agency’s desired program and management outcomes as well as the individual performance objectives toward which the employee should be focusing his/her efforts. The employee will be held accountable for his/her performance during the upcoming appraisal period. The discussion should also focus on the development of performance metrics that are quantifiable and results-based for each individual performance objective.

C. Employee Performance Plan

1. The EPMP endeavors to balance the demonstration of core competencies and achievement of individual performance goals.
  - a. ***Core Competencies*** – The measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position that have been validated and which apply broadly to all or many jobs within the Department. Each core competency is a critical element.
  - b. ***Individual Performance Goals*** – Specific goals assigned to an employee by the supervisor that describe detailed results that are to be achieved and which are described in the employee’s performance plan. A minimum of one goal must be assigned to an individual; however, three to five goals may be appropriate given the complexity and grade of the position. Each individual performance goal is a critical element unless defined as a developmental or team goal by the rating official in the goal title.

2. While rating officials should involve employees in the development of their performance standards to the extent practicable, rating officials retain sole discretion to determine the standards associated with each goal (e.g., quality, quantity, timeliness, manner of performance) at the “Achieved Expectations” and the “Achieved Excellence” levels. Performance objectives should clearly define expectations and differentiate within performance levels.

#### D. Monitoring Performance

1. Progress Reviews. There should be continuous feedback between the employee and his/her rating official. Progress reviews may take place at any time during the performance cycle; however are required quarterly. Ratings are not assigned for progress reviews.
2. Annual Rating of Record. An annual rating of record will be completed after the end of the performance cycle, in accordance with FEMA Manual 255-1-1. Employees are encouraged to provide input about their performance and a self-assessment prior to completion of the rating.
3. Dealing with Poor Performance. At any time during the performance cycle, if a Rating Official determines that an employee is performing poorly in one or more critical elements, appropriate action will be taken to address the performance deficiencies as soon as possible.

### SECTION 3. PERFORMANCE MANAGEMENT FOR WAGE GRADE EMPLOYEES

#### A. Definitions

1. ***Employee Performance Plan:*** A set of written expectations of work accomplishment and skills development. The Employee Performance Plan defines the performance expected of any employee in terms of performance criteria.
2. ***Performance Criteria:*** A component of the performance plan that defines employee performance responsibilities and expectations.
3. ***Rating of Record:*** The overall rating for the performance cycle. This rating is the final rating for the performance cycle and represents the official evaluation of the employee’s performance based on the combined final ratings for each performance criterion.
4. ***Unacceptable:*** A rating where the employee has failed to perform at a proficient level in one or more of the critical performance criteria.
5. ***Proficient:*** Performance in which the employee consistently performs in an acceptable manner, as described in the Employee Performance Plan.
6. ***Superior:*** Performance in which the employee consistently demonstrates unusual initiative in performing job responsibilities and consistently performs in a manner which is significantly beyond what is expected by the supervisor. The rating represents a level of performance of such unusually high quality, that it would normally occur only among a small percentage of employees performing under similar conditions.

#### B. Employee Performance Plan

1. The standard performance plan for all employees includes 10 performance criteria: Job Knowledge, Completing Tasks, Quality of Work, Customer Service, Problem Solving, Communication, Improving Work Processes, Coordination, Team Work, and Professional Development.
  2. Performance plans will be issued within 30 days of an employee's entrance on duty, reassignment or detail to new duties reasonably expected to last more than 90 days, or the beginning of a new performance cycle.
- C. Performance Cycle. The performance cycle is one year and coincides with the fiscal year. The starting date of the performance cycle is October 1. The performance cycle ends the following September 30.
- D. Monitoring Performance.
  1. Quarterly Performance Reviews: First-level supervisors and employees will meet quarterly to discuss work performance and the employee's ability to meet his/her requirements.
    - a. Performance relative to each criterion will be judged by the supervisor to be either On Target (OT) or Less Than Expected (LTE):
      - i. "OT" indicates that performance in this criterion is at least acceptable and the employee's progress over the previous quarter is on target.
      - ii. "LTE" notifies the employee that his/her performance in this area is less than expected by the supervisor.
  2. Annual Rating of Record. Ratings of record shall be given in accordance with FEMA Manual 3700.2. The final rating will be either Unacceptable, Proficient, or Superior.
  3. Dealing with Poor Performance. If attempts to remedy LTE performance in any one of the critical criteria have not been successful, and if performance is continuing in such a way as to indicate that the employee's final rating is going to be Unacceptable unless it improves significantly, a Performance Improvement Plan shall be issued.

#### **SECTION 4. PERFORMANCE IMPROVEMENT PLAN (PIP)**

- A. Before a performance based action is taken against an employee, the employee will be given an opportunity to demonstrate acceptable performance through the issuance of a written PIP. (5 USC 4302(B)(1)).
- B. The PIP will include the following:
  1. Identify Problems. Identification and articulation of each critical element being performed at an unacceptable level.
  2. Explain Standards. An explanation of what the employee must do to bring his or her performance in the critical elements so identified up to an acceptable level.
  3. Allow Improvement. A reasonable period of time commensurate with the employee's duties and responsibilities in which to improve performance, but not less than sixty (60) days.
  4. Provide Assistance. Where appropriate, the types of assistance that will be provided to the employee in improving his or her performance.

- C. MONITORING AND FEEDBACK: The supervisor will monitor the PIP and provide feedback to the employee.
- D. Upon request, the employee will be given a reasonable amount of time to meet with a union representative to discuss the PIP.
- E. RIGHT TO REVIEW DOCUMENTS: When a PIP is issued, the employee or his or her representative will be provided, upon written request, with a copy of the documents on which the PIP is based. The Agency will also supply the employee or his or her representative, upon written request, with a copy of any documents demonstrating instances of acceptable performance on the critical element(s) at issue in the PIP.

## **SECTION 5. RECORDKEEPING**

The retention, maintenance, accessibility, and disposal of performance records, as well as rating officials' copies, will be in accordance with Office of Personnel Management regulations.

## ARTICLE 15: AWARDS AND RECOGNITION

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies, procedures, and authorities set forth in [FEMA Manual 255-4-1, Employee Awards and Recognition](#), dated September 26, 2013, except as otherwise provided in this Agreement.
- B. FEMA is committed to maintaining a highly skilled workforce to achieve the organizational excellence necessary to guarantee quality service to the public. The Awards Program is designed to create an environment where employees actively and continually seek better ways to do their jobs and improve organizational performance, and take great pride in their achievements. The Awards Program recognizes employees based on the merits of their accomplishment, contributions and innovations in support of the Agency's vision, mission, core values, and strategic goals.

### **SECTION 2. FUNDING**

The employer retains the right to determine how much of its budget will be allocated for monetary recognition for bargaining unit employees.

### **SECTION 3. AWARD CATEGORIES**

- A. Administrator's Awards: The Administrator's Awards are honorary awards given by the Administrator to individuals and groups that have clearly demonstrated extraordinary performance in support of the Agency's Strategic Plan.
- B. Length of Service Awards: Length of Service is an honorary award recognizing years of service in the Federal Government, including active duty military service.
- C. Recognition Items: Recognition items are honorary awards such as a letter, certificate, pin, plaque with citation, or other recognition items of nominal value including gift cards or gift certificates.
- D. On-the-Spot Awards: On-the-Spot (OTS) awards provide recognition for a specific act or service that is in the public interest and has exceeded normal job requirements.
- E. Performance-Based Awards: Performance-based awards are lump sum cash awards or time-off awards designed to recognize employees for the accomplishment of duties based on merit at the end of the performance cycle.
- F. Quality Step Increases: A Quality Step Increase (QSI) provides an incentive to the employee and recognizes unusually high quality performance by granting an earlier than normal step increase.
- G. Special Act Awards: Special Act Awards are one-time, lump sum cash awards granted in recognition of a meritorious personal effort, act, service, scientific, or other achievement accomplished within or outside assigned job responsibilities related to official employment with FEMA.

- H. Time-Off Awards: A Time-Off Award (TOA) is an excused absence granted to an employee to be used without charge to leave or loss of pay in recognition of individual or group contributions or accomplishments.

#### **SECTION 4. NOMINATIONS**

Employees may nominate other employees for awards by submitting [nomination forms](#) to the employee's supervisor.

#### **SECTION 5. ANNUAL DATA**

In order to generate understanding, openness, and confidence, the Union will be provided annual statistical data consisting of the dollar amount budgeted per Program Office and a listing of employees who received an award including title, series, and grade. A meeting may be requested by the Union to discuss any concerns or issues it may have regarding the data.

## ARTICLE 16: UNIFORMS

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Directive 123-18-REV, Standard FEMA-Distinctive Clothing](#), dated July 25, 2011, except as otherwise provided in this Agreement.
- B. This article applies to bargaining unit employees who are required to wear specific clothing items to perform their duties.
- C. Uniform refers to a specified article or articles of clothing that may include, but is not limited to, such items as shoes, boots, hats, shirts, slacks, skirts, or outerwear an employee is required by an agency to wear to provide a distinctive and easily identifiable appearance in performing his or her job. A “uniform” does not include protective equipment required for the employee's safety under 5 USC 7903 or normal business or work attire purchased at the discretion of the employee.
- D. If the uniform logos, patches, and or designs are changed or altered, employees will have six months from the date of implementation to be in full compliance. Employees not in proper uniform may be prohibited from performing daily work. Employees will not be prohibited from performing daily work and will not be denied available overtime opportunities if the Agency does not provide uniform items or equipment in a timely manner, provided the employee did not substantively contribute to the delay.
- E. Employees are responsible for adhering to uniform requirements and guidelines outlined in this Article. Failure to adhere to uniform requirements may result in disciplinary action.

### **SECTION 2. INITIAL UNIFORM ISSUE**

- A. When a new employee is hired and brought on board, FEMA will provide the employee with an initial uniform allotment consisting of all required uniform items and accessories.
- B. If a current employee is promoted, he or she will get issued an initial uniform upgrade of items that have changed.

### **SECTION 3. UNIFORM REPLACEMENT**

- A. The Agency will replace uniform items as needed due to job-related damage or wear.
- B. Employees requesting a replacement must submit their replacement requirement to their supervisor so the uniform item can be ordered, if needed. Once the replacement item is received or available, the employee will be notified. After notification, the damaged or worn items must be turned in to their supervisor or designated point of contact and the employee will receive the new uniform item.

### **SECTION 4. MATERNITY UNIFORMS**

Upon notification to the Agency by the employee of the pregnancy, maternity uniforms will be

issued to the employee as needed as long as the employee performs work assignments normally assigned to uniformed employees.

## **SECTION 5. PROFESSIONAL APPEARANCE OF UNIFORM**

- A. When wearing the uniform, employees will, at all times, present a neat appearance—clothes cleaned, pressed, and in an acceptable state of repair.
- B. The wearing of jewelry or other accessories may not interfere with the ability to wear personal protective equipment.
- C. Unit employees may elect to wear pins with AFGE Union insignia on their uniform while on duty. Any AFGE Union pin must be reviewed and approved by the Agency in advance.

## **SECTION 6. PROPER USE OF UNIFORMS**

- A. Employees may wear their FEMA uniform during the normal work commute, on breaks, during meal periods, or during time periods between split shifts. Employees may also wear their uniform during brief stops that are part of the normal work commute.  
Examples of stops that may be part of the normal work commute include, but are not limited to, dropping off and picking up children from day care or school, and briefly stopping to buy a cup of coffee.
- B. The public will view an employee in uniform as representing FEMA, even if the employee is off duty. Therefore, any wearing of a FEMA distinctive uniform off-duty, except as provided in Section 6.A, is prohibited. In particular, employees may not wear a FEMA distinctive uniform in inappropriate establishments, or participate in activities that could compromise the credibility of FEMA. Examples of activities not permitted while in uniform include, but are not limited to, gambling, consuming alcoholic beverages, or participating in public events (including volunteer activities) not explicitly approved or sponsored by FEMA/DHS. If employees have questions about a specific activity, they should discuss it with their supervisors.
- C. Employees may wear their uniforms at solemn occasions, such as funerals or memorials, with Agency approval.

## **SECTION 7. CHANGES**

In the event the Agency exercises its right to change, modify, amend or alter its uniform program in a manner that affects bargaining unit employees, the Agency will follow the procedures in Article 9, Impact Bargaining and Midterm Bargaining.

## ARTICLE 17: WORK SCHEDULES

### **SECTION 1. GENERAL**

- A. Scheduling of Work Policy. The Parties agree to follow the policies, procedures, and authorities set forth in [FEMA Manual 106-1-1, Scheduling of Work](#), dated March 5, 2014, except as otherwise provided in this Agreement.
- B. Premium Pay Policy. The Parties agree to follow the policies, procedures, and authorities set forth in [FEMA Manual 253-2-1, Premium Pay](#), dated February 11, 2014 except as otherwise provided in this Agreement.

### **SECTION 2. WORK SCHEDULES**

- A. Traditional Work Schedule. Unless an employee has requested and been approved for alternate work schedule, the employee will work a traditional work schedule.
  - 1. TWS workdays consist of:
    - a. For full-time employees, eight hours per day, 40 hours per week; and
    - b. For part-time employees, between 16 and 32 hours per week and, eight or fewer hours per day on five or fewer days per week.
- B. Alternative Work Schedule. All employees will be afforded the opportunity to participate in an alternative work schedule unless prohibited by the specific nature of their position.
  - 1. Flexible Work Schedule: A work schedule established with approval by the employee's supervisor that:
    - a. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by FEMA's business and core hours.
    - b. In the case of a part-time employee, has a biweekly basic work requirement of 64 hours or less that allows an employee to determine his or her own schedule within the limits set by FEMA's business and core hours.
  - 2. Compressed Work Schedule: A work schedule established with approval by the employee's supervisor that:
    - a. For a full-time employee, has an 80-hour biweekly basic work requirement scheduled for fewer than 10 workdays.
    - b. For a part-time employee, has a biweekly basic work requirement of 64 hours or less scheduled for fewer than 10 workdays.
  - 3. Requesting an AWS
    - a. Employees may request to participate in an AWS by preparing a FEMA Form 106-0-1-1 and forwarding it to their supervisor for approval.
    - b. Supervisors must approve or deny an employee's request prior to the pay period in which the schedule would take effect. A supervisor must state the reasons for denying an employee's request on FEMA Form 106-0-1-1.
  - 4. All types of Alternative Work Schedules may be combined with telework.
- C. Court/Administrative Hearing Appearances. An employee called to testify in an official

capacity is in official duty status and his/her appearance is considered hours of work. An employee's work schedule may be adjusted to facilitate the employee's appearance in an official capacity during duty hours. An employee required to extend his/her duty day or appear on a non-duty day will be compensated in accordance with applicable law and regulation.

- D. Fire Department Work Schedule. Full-time crew chiefs, firefighters and paramedics will work a rotating schedule consisting of 6, 24-hour shifts equaling 144 hours within a pay period. Fire inspectors will work shifts equaling either 112 or 120 hours within a pay period. When considering a change to the firefighter schedule, the Agency will engage in pre-decisional discussions with the Union.
- E. Compensatory Time Off for Religious Observances. An employee whose personal religious beliefs require absence from work during certain periods of time may elect to work overtime, with supervisory approval, to offset the time absent in meeting that religious obligation.
  - 1. An employee who is approved for such overtime work will be granted equal compensatory time off in lieu of overtime pay.
  - 2. The overtime work must be performed within 3 weeks preceding or following the period of religious observance.
  - 3. If the employee does not perform the overtime work within this timeframe, the hours will be charged to annual leave or LWOP.
- F. Lunch or Meal Period. Work schedules of employees (except firefighters and police officers) required to work more than five hours per workday will include a 30-minute unpaid lunch or meal period, unless modified to meet operational needs. This unpaid lunch or meal break period may be extended to a maximum of one hour provided the workday is correspondingly extended. Lunch or meal periods may not be scheduled at the beginning or end of the workday. Because employees receive no compensation for lunch or meal periods, they must be entirely free of the duties of their positions during this period. An employee may not work through the lunch or meal period in order to extend paid time or to otherwise modify his or her established schedule.
- G. Break Periods. Workload permitting, an employee will be given a 15 minute break which normally would occur in the middle of each four (4) hour work period. This break may not be combined with the lunch or meal period. Additional break time may be provided at the discretion of supervisors in extenuating personal circumstances and workload permitting. If additional break time is granted, the employee's daily schedule will be extended by the additional period of time the employee is given.

### **SECTION 3. OVERTIME**

- A. Overtime Work. The parties recognize the right of management to direct and approve overtime as afforded in 5 USC 7106 (a)(2)(a) and (b).
- B. Compensation. All overtime work will be compensated in accordance with applicable law and regulation.

- C. Assignment of Overtime Work. Overtime work will be assigned in an equitable manner among qualified employees. When management decides to use overtime, qualified volunteers will be used before non-volunteers. Agency shall determine the numbers, job categories, skills, and experience required to meet its overtime assignments and the employees who meet these requirements. Overtime shall not be distributed or withheld as a reward or punishment.
- D. Scheduled Overtime.
  - 1. Some work units have work schedules that include scheduled overtime in the work schedule (e.g. pre-shift or post-shift activities, 24/7 coverage requiring a shift change briefing).
  - 2. Canine Handlers are required to be responsible for the care, control, grooming, training, and exercise of the assigned police dog 24 hours per day, including the officer's non-duty days. Canine Handlers are authorized one hour of overtime per day for this at-home care, as well as the maintenance of the assigned K-9 vehicle. If the care for the canine (or an additional canine) and/or K-9 vehicle will require more than the one hour authorized, the Canine Handler shall notify his/her supervisor and seek advanced approval to work additional time. On days the Canine Handler is not in possession of an assigned police dog or is not able to perform the at-home care duties, the Canine Handler is not entitled to scheduled overtime.
- E. Hardships. Upon request and a reasonable showing that a requirement to work overtime shall be a hardship on the employee, management may excuse employees from overtime, provided that management can meet requirements by utilizing the services of other employees.
- F. Call-Back Overtime
  - 1. Call-back overtime work is irregular or occasional overtime work performed by an employee called back to work from an off-duty status or called back to work on a day on which no work was scheduled. Call back of employees shall be made at the discretion of the Agency when employees are needed to help mitigate or control an incident.
  - 2. Procedures
    - a. In situation where there is less than 12 hours available to identify an employee to perform overtime due to an absence or other short notice reason, management may assign an employee to cover the shift. Supervisors shall attempt to distribute overtime work in such instances equitably among qualified employees.
    - b. In situations where there is more than 12 hours to identify an employee to perform overtime, call-back procedures will be used to meet staffing requirements.
      - i. For work units that currently have call-back procedures, they may continue to use the call-back procedures as long as they meet the requirements below.

- ii. For work units that do not have a call-back procedure, any newly established call-back procedure must:
    - a) Allow for the identification and utilization of volunteers and a way for employees to temporarily indicate their unavailability (volunteer list),
    - b) Utilize a fair method of contacting volunteers, based on seniority or some other agreed upon objective standard,
    - c) Utilize a single mandatory overtime list, created as appropriate within each work unit or job function, based on seniority or some other agreed upon objective standard,
    - d) Take into consideration the skillset required for the overtime work, approved leave, and safety considerations (number of hours consecutively worked).
3. Employees are not authorized to report for duty unless requested by the Agency.
4. An employee who is called back to work, at a time outside of and unconnected with the employee's scheduled hours of work, will receive a minimum of two hours call-back pay. Employees are not generally compensated for their commute time, except when a Canine Officer is called out or dispatched after duty hours to respond to an emergency situation in support of federal, state, or local agency for explosive detection canine duties. For these instances, a Canine Officer's call-back time commences when the Canine Officer signs into service and concludes when the canine is secured at the officer's residence.

#### H. Standby Time

1. Time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his or her own purposes.
2. Procedures: The employee must be officially notified by his or her supervisor in order to be on standby duty. The notice must include the post of duty to which the employee is restricted and the date and beginning and ending times for the period of standby duty.

#### I. On-Call Time.

1. Both FLSA exempt and nonexempt employees are considered off duty and time spent in an on-call status is not considered hours of work if:
  - a. The employee is allowed to leave a telephone number or carry an electronic device upon which he or she may be contacted, even though the employee is required to remain within a reasonable call-back radius; or
  - b. The employee is allowed to make arrangements for another employee to perform any work that arises.
2. Procedures:
  - a. The employee must be officially notified by his or her supervisor in order to be on call. The notice must include the date and beginning and ending times for the period of on call status.

- b. During the on call period an employee must remain available by phone at all times and report to work within two hours after being called.
- c. Employees failing to report to work within two hours after being called without a legitimate, justifiable excuse may be subject to disciplinary action.

## **SECTION 6. SHIFT WORK**

The following provisions apply to employees who are regularly scheduled for shift assignments. Shifts assignments may be used in work units requiring coverage 24 hours a day, seven (7) days a week or requiring regular coverage outside normal work hours.

### A. Requesting Temporary Shift Changes

- 1. Employees may request to trade a shift with another employee when:
  - a. The trade is between employees who are in a similar position, similarly graded, and are qualified to perform the same duties
  - b. The trade does not create an entitlement to premium pay
  - c. The trade is for at least one full shift
  - d. The shift or shifts being traded do not extend beyond one pay period
- 2. The requests for temporary shift changes must be made in writing and submitted to the employee's immediate supervisor seven days in advance.
- 3. Shift trades must be approved at the supervisory level which has authority over the employees involved. Shift change requests will be approved at least three days in advance.

### B. Requesting Permanent Shift Changes

- 1. The requests for permanent shift changes must be made in writing and submitted to the employee's immediate supervisor 30 days in advance.
- 2. If there are multiple individuals requesting to be transferred to the same shift, assignment will be made on the basis of seniority, except when there are reasonable accommodation needs.
- 3. Permanent shift change requests are approved at the discretion of the supervisor. When approved, approval will be at least seven days in advance.
- 4. An employee's voluntary request to change shifts may cause his/her previously approved leave to be cancelled.

### C. Involuntary Shift Change

- 1. Employees may be involuntarily transferred to another shift to address personnel shortages. However, the Agency will first seek volunteers to change to another shift by announcing the shift change opportunity and identifying the job categories, skills, or experience required.
- 2. If there are not enough volunteers, the Agency will identify the employees with the job categories, skills, or experience required. Selections from among these qualified employees will be done on the basis of inverse seniority.
- 3. The Agency will notify affected employees and the Union at least 15 days in advance of a change.
- 4. Once the personnel shortage has been resolved, the employee may request to return to the shift from which they were transferred. Management will make a

reasonable effort to accommodate the request.

## ARTICLE 18: ABSENCE AND LEAVE

### **SECTION 1. GENERAL**

- A. The parties agree to follow the policies and procedures set forth in [FEMA Manual 123-10-1, Absence and Leave](#), dated December 29, 2015, except as otherwise provided in this Agreement.
- B. Accrual and Use of Leave. Employees earn annual and sick leave in accordance with their tenure and type of appointment in the federal service and applicable leave regulations. The minimum charge for leave will be one-quarter hour.

### **SECTION 2. SCHEDULING OF WORK AND LEAVE**

- A. Reporting for Duty Mission Ready. Employees must report to work mission ready. Employees who are issued FEMA equipment that is necessary to perform their duties, must report to their designated worksite with such equipment according to their authorized duty schedule. If an employee must leave his/her duty station to retrieve any necessary equipment, the employee shall use accrued annual leave, credit hours, or compensatory time to retrieve the equipment. In lieu of using paid leave, supervisors may approve LWOP if the employee does not have accrued leave. In all cases, employees shall not be granted administrative leave with pay to retrieve missing equipment.
- B. Requests for Leave or Approved Absence. An employee who wishes to take leave must submit his/her leave request using WebTA or successor system. The request must include the day(s), the type of leave, the number of hours, and the specific hours (from-to) of the absence being requested by the employee. Employees should provide their supervisors with as much advanced notice as possible for leave requests. When the need for leave arises in unforeseeable circumstances that prevent the employee from reporting to duty on a timely basis, the employee will contact the immediate supervisor or designated Agency official(s) to provide notice and request leave before the beginning of his or her reporting time or as soon as possible thereafter.
- C. Timely Responses to Requests. Consistent with the needs of the Agency and the Employee, leave requests will be decided in a timely manner. If requested by the employee in writing, a written explanation for a denial will be provided to the employee within 10 working days of the request for explanation.
- D. Cancellation of Leave. An employee may cancel previously approved leave. The Agency must be informed of this decision in a timely manner, e.g., as far in advance of returning to work as possible.

### **SECTION 3. ANNUAL LEAVE**

- A. An employee may use annual leave for vacation, rest, relaxation, personal business or emergencies. An employee has a right to take annual leave, subject to the right of the supervisor to schedule time at which time annual leave can be taken.

B. Approval. When multiple requests for annual leave for the same period cannot be granted, the supervisor will attempt to resolve the conflict between the employees. A supervisor may consider any of the following factors when weighing competing leave requests:

1. Accrued Leave. The employee's accrued leave balance (e.g., the request of an employee who has "use or lose" leave could be given preference over one who has a lower leave balance).
2. Previous Request. Whether the requesting employee was denied leave at the desired time during a previous leave year.
3. Seniority. The requesting employee's seniority, with the same meaning and usage as elsewhere in this Agreement.

C. Mount Weather Fire Department Procedure for Scheduling Annual Leave. Procedures for scheduling annual leave for vacation periods are as follows:

1. On December 1<sup>st</sup>, the most senior individual based on comp service date, will be presented the Fire Department Leave Book and the Personnel Rotation List.
2. The individual will place their initials in the dates of up to 14 consecutive days they are requesting for a vacation period. Only one vacation period per individual will be scheduled per rotation.
3. The employee will be given up to twenty four (24) hours to schedule their vacation period for each rotation.
4. Employees on extended leave or regular break will be notified by phone and will have twenty four (24) hours to schedule their vacation period or forfeit that rotation. In the interest of time, personnel can leave a sealed proxy list of requested vacation times with the Assistant Chiefs who can act on their behalf.
5. A wish list will be attached to the Fire Department Work Schedule Calendar for individuals to submit for vacations times that are already taken when the rotation comes to them. After the submittal period the Wish List will be maintained with the Fire Department Leave Book.
6. After initialing a Vacation Period, the Fire Department Leave Book and the Personnel List will be forwarded to the next person on the list. A rotation will continue until the list reaches the least senior person on the list.
7. This procedure will continue to rotate for employees to schedule six (6) vacation periods.
8. Notification of the scheduled vacation periods will be approved / disapproved and posted in the Fire Department Leave Book by February 5<sup>th</sup>. Vacation leave will be marked in the book in RED ink.
9. Cancellation
  - a. An employee may cancel scheduled vacation at any time before the start of the vacation period. In doing so the employee will lose the right to reschedule an additional vacation period, except on a first come, first serve basis. This vacation period will be filled off the Wish List, if no one has submitted this timeframe on the Wish List, this period is open on a first come, first serve basis.
  - b. An employee may not cancel the middle of a vacation period. Vacation periods are to be consecutive days / shifts selected during the

vacation open period. Cancellation of any shifts shall cause a forfeit either the beginning or the end of the vacation period.

10. Annual Leave requests may be submitted any time after the posting of the Vacation Schedule for the remainder of the year. This will be done on a first come, first serve basis. This leave will be marked in the Fire Department Leave Book in BLUE ink.

## **SECTION 4. SICK LEAVE**

- A. Sick leave should be granted to an employee when an employee:
  1. Schedules medical, dental, or optical examinations;
  2. Is receiving medical, dental, or optical treatment;
  3. Is incapacitated from the performance of position duties by physical or mental illness, injury, pregnancy, or childbirth;
  4. Would, because of communicable disease, jeopardize the health of other employees and/or the general public by being on the job (when there is uncertainty as to whether a particular ailment meets the definition of a "communicable disease" and it is not addressed by local health regulations, the employee should be asked to provide a statement from the patient's physician that the ailment is contagious. This statement should contain the period of time for which the patient must be confined or isolated); or
  5. Must be absent from work for adoption-related activities (e.g., appointments with adoption agencies, social workers and attorneys, court proceedings, required travel, periods of time adoptive parents are required by court or agency to care for the adopted child).
  6. In addition, employees may take sick leave to (1) provide care for a family member as a result of physical or mental illness, injury, or medical, dental, or optical examination or treatment; or (2) make arrangements necessitated by the death of a family member or attend the funeral of a family member.
- B. Medical Certificates. Employees are required to provide "administratively acceptable" evidence to their supervisor when requesting sick leave. Normally, the only thing needed to satisfy this requirement is an employee's certification on WebTA as to the reason for the absence. However, for an absence in excess of three workdays (or for shorter absences where there are reasonable questions about the circumstances of the leave or where it is unclear whether the employee is totally incapacitated for duty), supervisors may require an employee who misses work to submit a doctor's certification of the medical reason for the leave or other satisfactory evidence as to the reason for the absence. If a supervisor has a reasonable basis to suspect an employee is abusing sick leave, the employee may be required to support all incidences of sick leave with a medical certificate regardless of duration. The employee must provide the required certification within a reasonable amount of time. Unapproved sick leave may be charged to annual leave or as AWOL.
- C. Advancing Sick Leave.
  1. An employee may, at the supervisor's discretion, be granted sick leave in advance of accrual in the event of serious disability or ailment, defined as one which

usually lasts for at least 3 consecutive work days and is supported by a medical certificate.

2. A supervisor should not advance sick leave to an employee when it is known (or reasonably expected) that the employee will not return to duty (e.g., when the employee has applied for disability retirement).
3. Maximum Advance. The amount advanced to a full-time employee may not exceed 240 hours. Part-time employees, working under a regular tour of duty, may be advanced sick leave on a pro rata basis.

## **SECTION 5. LEAVE ABUSE**

If reasonable grounds exist for questioning an employee's use of leave, the Agency may place an employee on a Leave Restriction. A Leave Restriction requires the employee to seek approval for any Annual Leave in advance or speak directly to the employee's supervisor and provide proof of an emergency preventing the employee from reporting to work. A Leave Restriction requires the employee to provide acceptable medical documentation for any Sick Leave request. The Leave Restriction will describe the circumstances which led to its issuance and will specify the termination date of the restriction. At the end of the stated period (not to exceed six (6) months), the Agency will review the employee's situation and if the circumstances that led to the leave restriction have improved, will notify the employee in writing if the leave restriction is no longer in effect. If the employee situation has not improved the Agency will notify the employee in writing if the Leave Restriction will be extended, and reviewed within six (6) months.

## **SECTION 6. FAMILY MEDICAL LEAVE ACT**

- A. An employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12 month period for one of the following purposes:

1. The birth of a son or daughter of the employee and the care of such son or daughter;
2. The placement of a son or daughter with the employee for adoption or foster care;
3. The care of a spouse, son, daughter, or parent of the employee with a serious health condition;
4. In response to a serious health condition of the employee who is unable to perform any one or more of the essential functions of his or her position; or
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has received notice to be called to active duty) in the Armed Forces (see 5 C.F.R. § 630.1204 for more information).

- B. An employee (or an employee's representative) must invoke his or her right to take leave under FMLA before taking leave. An employee cannot retroactively invoke his or her right to take leave under FMLA, unless the employee is mentally or physically incapable of providing notice of his or her intent to take FMLA leave during the entire time the employee is absent from duty. In such cases, the employee may be required to provide documentation explaining the employee's and/or representative's inability to notify FEMA of the employee's absence. A supervisor may ask an employee if it is his or her intent to invoke his or her FMLA protection when he or she is requesting qualifying leave.

## **SECTION 7. COURT LEAVE**

- A. Court leave is not charged to leave and will not result in a loss of pay to employees who serve as a juror or witness in accordance with FEMA Manual 123-10-1.
- B. If the employee is a party to a suit with only private parties, the employee cannot use court leave, but must use annual leave, credit or compensatory leave, or LWOP.
- C. Court leave must be requested in advance, and a copy of the summons or subpoena must be included in the request. Employees may be required to provide proof of attendance as a juror or witness.
- D. There is no limit on the amount of court leave that may be granted to an employee.

## **SECTION 8. MILITARY LEAVE**

- A. Military leave will be administered in compliance with applicable laws and regulations.
- B. Eligibility.
  - 1. Full-time permanent employees or non-permanent employees with appointments of one year or more are eligible for military leave.
  - 2. Part-time employees with a scheduled tour of duty between 16 and 32 hours per week are eligible for prorated military leave.

## **SECTION 9. EXCUSED ABSENCE**

Employees may be excused from performing their regular duties for certain activities which are considered to be in the interest of the Government. Absences may also be granted in certain other special circumstances, such as hazardous weather conditions (subject to Article 19, Telework), voting, job-related medical examinations, and blood donations (up to 4 hours in accordance with FEMA Manual 123-10-1, Section 10-15).

## **SECTION 10. LEAVE WITHOUT PAY**

- A. Leave without pay (LWOP) is a temporary non-pay status and absence from duty that may be granted at the employee's request. In most instances, granting LWOP is a matter of supervisory discretion and granting LWOP should be done sparingly.
- B. Employees are entitled to LWOP under the following circumstances:
  - 1. The Family and Medical Leave Act of 1993 (FMLA), provides covered employees with an entitlement to a total of up to 12 weeks of unpaid leave (LWOP) during any 12-month period for certain family and medical needs (see Chapters XX and XX and 5 C.F.R. Part 630, Subpart L).
  - 2. The Uniformed Services Employment and Reemployment Rights Act of 1994, provides employees with an entitlement to LWOP when employment with FEMA is interrupted by a period of service in the uniformed service (see 5 C.F.R. § 353.106).
  - 3. Executive Order 5396, dated July 17, 1930, provides that disabled veterans are entitled to LWOP for necessary medical treatment.

4. Employees receiving workers' compensation payments from the Department of Labor must be placed in an LWOP status.
- C. LWOP must be requested and approved in advance before taking LWOP. Failure to do so will result in an unauthorized absence.

## **SECTION 11. VOLUNTARY LEAVE TRANSFER PROGRAM**

- A. The Voluntary Leave Transfer Program (VLTP) allows eligible employees to donate annual leave or receive donated annual leave from other Federal employees in response to a medical emergency.
- B. A medical emergency is defined as a medical condition of an employee or a family member of an employee that may require an employee's absence from duty for a prolonged period and result in a substantial loss of income to the employee because of the unavailability of paid leave. You must have exhausted all of your annual (AL) and sick leave (SL) prior to using any donated leave.
- C. The Agency will post the Voluntary Leave Transfer Program (VLTP) application and donating procedures for the VLTP on the Intranet.
- D. On a quarterly basis, the Agency will provide information to all employees on the VLTP and a link to the list of names of employees approved for the VLTP.

## **SECTION 11. BRIEF ABSENCES OR TARDINESS**

In cases of occasional brief periods of absence or tardiness of less than one (1) hour due to circumstances beyond his or her control; e.g., inclement weather, traffic, transportation issues, etc., an employee may request leave, the supervisor may grant an excused absence, or the employee and supervisor can agree to adjust the work schedule for that shift.

## ARTICLE 19: TELEWORK

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 123-9-1, Telework](#), dated January 9, 2013, except as otherwise provided in this Agreement.
- B. The purpose of telework is to complete the duties, responsibilities and other authorized activities (such as online training) of an employee's official position from an alternative worksite, other than at the location an employee normally works. FEMA promotes telework (also known as flexiplace, telecommuting, or work-from-home) as a workplace flexibility for recruiting top talent; retaining current employees; accommodating employees with disabilities; reducing the cost of office space, absenteeism, and use of workers compensation; and to ensure continuity of essential governmental functions in the event of an emergency.

### **SECTION 2. DEFINITIONS**

- A. Emergency: Includes national and local security situations, extended emergencies, or other unique situations when the Agency is closed or access to an employee's official duty station or other agency facilities is limited.
- B. Regular Telework (Core): Work that is performed on an established work schedule at an approved AWL on a regular, recurring, and ongoing basis. Telework arrangements may be determined by the Supervisor to be full-time or part-time based on eligible telework duties and portable work needs (full-time arrangements must consider Section 3-3, Official Duty Station). Employees with Regular Telework agreements may also apply for Situational Telework in order to work on specific projects and/or in response to an emergency.
- C. Situational Telework (Episodic): Telework that occurs on an occasional, non-routine basis and/or during COOP/pandemic health crisis or other emergency situations. Supervisors have discretion to establish timeframes for Situational Telework (Episodic) based on work-related factors such as work priority, deadlines, etc. When making an approval for a situational telework agreement for a medical reason, special project, or accommodation request, the agreement must be reviewed and reapproved every 30 days. Telework arrangements may be determined by the Supervisor to be full-time or part-time based on eligible telework duties and portable work needs (full-time arrangements must consider Section 3-3, Official Duty Station). The definition of situational telework includes "unscheduled telework" as defined separately. Situational telework may be used:
  1. To allow an employee to perform work on a specific organizational project or a discrete portion of a project;
  2. To permit an employee to perform work at an AWL during inclement weather;
  3. To allow an employee to perform work when his/her official worksite is not accessible (e.g., building damage/emergency, or because of traffic disruption due to street closures, conventions, demonstrations, etc.);

4. To enable an employee to perform work at an AWL during an agency closure or early dismissal (see Section 3-9, Emergency Situations for further detail); or
  5. For an employee who is recovering from illness or an injury and is temporarily unable to physically report to the traditional office, as supported by documentation from the employee's physician.
- D. Telework: A flexible work arrangement under which employees perform the duties and responsibilities of their positions from an approved worksite other than the location from which the employee would otherwise work.
- E. Telework Application and Agreement: A written agreement of the terms and conditions of the telework arrangement that is completed and signed by the participating employee and the supervisor or designee(s).
- F. Unscheduled Telework: A term applied in the context of OPM's Washington, DC, Area Dismissal and Closure Procedures, in reference to telework that occurs on day(s) that a telework approved employee was not scheduled in advance to telework. This is considered a type of situational telework and applies to all FEMA locations.

### **SECTION 3. PROCEDURES**

- A. Employees requesting to telework shall:
  1. Complete the telework awareness training
  2. Prepare a telework documentation package ([FEMA Telework Program Application and Agreement Form](#) and [FEMA Telework Health and Safety Checklist](#)) in accordance with FEMA Manual 123-9-1
  3. Submit telework documentation package to supervisor for approval
  4. Submit approved telework documentation package to the Telework Coordinator
  5. Update Transit Subsidy application, if required.
- B. If a telework request is disapproved, the employee will be provided with justification for the disapproval.
- C. The telework arrangement may be terminated in writing by either management or by the employee with reasonable advance notice, generally fourteen calendar days, but not less than seven calendar days. When an arrangement is terminated by management, the supervisor must provide the employee with a brief, written explanation as to why.
- D. Management reserves the right, normally with one day notice, to require employees to return to the official duty location on scheduled telework days, based on operational requirements. Exceptions for a lesser notification may be appropriate in certain unforeseen situations.
- E. With supervisory approval, an employee may report to the office on any regularly scheduled telework day.

- F. Employees may request to have additional alternate work location approved following the procedure in paragraph A above.

#### **SECTION 4. TERMS AND CONDITIONS**

- A. Employees who telework must be available to their coworkers, supervisor, and customers in the same manner as if they were in their duty location. Specific communication expectations (e.g. use of Microsoft Lync) shall be addressed in the telework agreement, if necessary.
- B. Employee performance for teleworkers and non-teleworkers will be evaluated using the same performance management program and standards that cover workers at traditional office/duty locations. This includes providing all employees the same opportunities and treatment with regards to work assignments, periodic appraisal of job performance, awards, recognition, training and developmental opportunities, promotions, and retention incentives.
- C. While in a telework status, employees will not be treated differently nor will their administrative or reporting requirements to their supervisors vary from when working in the office (i.e. teleworking employees may only be required to report their status to their supervisor or to report on work accomplished or to be accomplished if required to do so when present in the office).
- D. Teleworkers are responsible for ensuring appropriate arrangements for the care of dependents at home if the home is their official telework duty location. That is, employees may not use telework to personally care for a dependent. However, this does not preclude a teleworker from having a caregiver working in the home providing care to the dependent(s) while he/she teleworks.
- E. Telework may not be used in lieu of sick leave.
- F. Time and Attendance, Work Performance and Overtime.
  - 1. Time spent in a telework status must be accounted for and reported in the same manner as if the employee reported for duty at the official duty station. The employee is required to satisfactorily complete all assigned work, consistent with the approach adopted for all other employees in the work group, and according to standards and guidelines in the employee's performance plan.
  - 2. The employee agrees to follow their normal mission area/agency/staff office procedures regarding the requesting and approval of overtime, credit hours, and leave that are worked while in a telework status.
  - 3. All approved telework hours are to be reported in the WebTA Time Attendance and System.
- G. Teleworking employees continue to be bound by DHS and FEMA standards of conduct and performance directives and policies while working at the alternate worksite.

#### **SECTION 5. EMERGENCIES**

- A. Employees shall monitor, read and comply with OPM or Agency announcements unless otherwise directed by their supervisors. In situations of emergency closings, late openings, or early dismissals, employees shall follow the procedures set forth in [FEMA Manual 123-9-1, Chapter 3-9](#).
- B. The Agency may require any employee to telework in accordance with an activated Continuity of Operations Plan (COOP).
- C. Supervisors may excuse telework ready employees from work and grant annual or administrative leave with pay, as appropriate, when an emergency adversely affects the telework site (e.g., disruption of electricity, loss of heat, loss of connectivity, etc.), or if the teleworker faces a personal hardship that prevents him or her from teleworking effectively. Dependent care needs do not ordinarily entitle a teleworker to administrative leave; annual leave will be granted as appropriate.

## **SECTION 6. OFFICIAL TIME FOR UNION REPRESENTATIVES**

In locations where Union office space is not provided, Union representatives may use official time in accordance with the Official Time Article while in a telework status. Union representatives must be on an approved telework agreement for such official time to be approved.

## **ARTICLE 20: DISASTER DEPLOYMENT**

### **SECTION 1. STATEMENT OF UNDERSTANDING**

The parties acknowledge that all FEMA employees are subject to recall around the clock for emergency management operations which may require irregular work hours, work at locations other than the official duty station, and may include duties other than those specified in the employee's official position description. Both parties recognize that emergency assignments may change due to circumstances and staff availability at the time an incident or operation occurs.

### **SECTION 2. DEPLOYMENT**

- A. The parties agree to follow the policies and procedures set forth in [FEMA Directive 010-8 \(revised\), FEMA Incident Workforce Deployment](#), dated October 16, 2014, except as otherwise provided in this Agreement.
- B. Employees will be "available for deployment" in the FEMA deployment system unless approved by their supervisor of record to be "unavailable for deployment."
- C. Employees will be deployed as described in FD-010-8, Section VII. C.
- D. While on deployment the supervisor of record will take into consideration the fact that the employee is deployed in the assignment of job duties.
- E. Employees can request leave at any time while deployed. After 30 consecutive days of being deployed an employee's request for leave will not be denied unless the mission of the Agency is impacted.

### **SECTION 3. RIGHT TO REPRESENTATION WHILE DEPLOYED**

The parties acknowledge that while on disaster deployment, all FEMA bargaining unit employees shall have the same rights and privileges accorded them while at their permanent duty station. Where practical and feasible, these rights shall extend to access to a union official and representation.

## ARTICLE 21: TRAVEL

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 122-1-1 Travel Policy](#), dated October 23, 2015, except as otherwise provided in this Agreement.
- B. The parties recognize that employees may be required to perform travel away from their official duty station. When travel is required, employees will be compensated for their time and expenses in accordance with applicable law, Government-wide rule or regulation, including 5 C.F.R. Parts 550-551 and 41 C.F.R. Chapters 300-301 (Federal Travel Regulations) and this Article.
- C. The Agency agrees to provide information on the FEMA intranet site and offer training regarding reimbursable travel expenses, proper use of the travel charge card, use of the electronic travel systems, miscellaneous expenses, and per diem. Employees are encouraged to regularly review information on the FEMA intranet site, particularly regarding reimbursable expenses and practices addressing travel outside regular working hours.

### **SECTION 2. COMPENSATION FOR TRAVEL**

- A. Travel time, whenever possible, should be scheduled during an employee's regularly scheduled tour of duty. It is recognized that in some cases, no amount of planning or scheduling will prevent an employee from being required to travel outside of his or her regularly scheduled tour of duty.
- B. Travel time that counts as hours of overtime work shall be compensated with overtime pay or compensatory time in accordance with the applicable law, regulation, and the Work Schedules article.
- C. FLSA Nonexempt Employees. For FLSA nonexempt employees, travel time is considered to be hours of work under **either** the FLSA exempt employee rules (below) or when the time spent in travel status is outside a 50-mile radius of their official duty station and they are required to:
  1. Travel during regular working hours;
  2. Drive a vehicle or perform other work while traveling;
  3. Travel as a passenger on a one-day assignment away from the official duty station; or
  4. Travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.
- D. FLSA Exempt Employees. Time spent in travel status outside a 50-mile radius of an employee's duty station, is considered to be hours of work, if the time spent traveling:
  1. Is within the days and hours of the regularly scheduled administrative workweek;
  2. Involves the performance of work while traveling;
  3. Is incident to travel that involves the performance of work while traveling;

4. Is carried out under arduous conditions; or
5. Results from an event which could not be scheduled or controlled administratively. (For example, an employee may be required to travel on a non-workday, *e.g.*, Saturday or Sunday or travel extends past normal work hours.)

### **SECTION 3. COMPENSATORY TIME FOR TRAVEL**

- A. Compensatory time off for travel is a form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Both FLSA exempt and nonexempt employees receive compensatory time off for time spent in travel status that is not otherwise compensable as hours of work.
- B. Requests for compensatory time off for travel must be made in advance using WebTA.
- C. Compensatory time off for travel is credited and used in increments of 15 minutes.
- D. Forfeiture: Compensatory time off for travel is forfeited:
  1. If not used by the end of the 26th pay period during which it was earned;
  2. Upon voluntary transfer to another agency;
  3. Upon movement to a non-covered position; or
  4. Upon separation from the Federal Government.

### **SECTION 4. TRAVEL CHARGE CARD**

- A. All employees must comply with the policies and procedures for the travel charge card set forth by Federal Regulations, DHS/FEMA policies, and FEMA travel directives.
- B. All FEMA employees must be issued a government travel charge card unless:
  1. The employee travels infrequently (less than twice per year) for non-disaster purposes; and/or
  2. The employee's travel charge card privileges have been suspended or cancelled.
- C. The travel charge card may only be used for official travel expenses while on TDY travel, including charges incidental to travel that may not be reimbursable under applicable law, Government-wide rule or regulation. Employees may not use the travel charge card to make personal purchases, obtain cash from automated teller machine (ATM) withdrawals unrelated to official TDY travel, or for any other purpose unrelated to official travel. In addition, the card cannot be used for reimbursement of local travel expenses, except when authorized (by an approved travel order) for a rental car for a site visit and the purchase of gasoline for the rental car's official use.
- D. Employee's whose Travel Charge cards are cancelled or suspended are encouraged to utilize the Employee Assistance Program.

### **SECTION 5. PROMOTIONAL ITEMS**

In accordance with Public Law 107-107 (the National Defense Authorization Act for Fiscal 2002, S. 1438), Employee's may retain and use promotional items, including frequent flyer miles, earned on government travel.

## **SECTION 6. REIMBURSEMENT FOR TRAVEL EXPENSES**

- A. The Agency will reimburse employees for travel expenses through electronic funds transfer. Employees must submit a travel claim (i.e., voucher) within five (5) working days after completion of the travel or every 14 days if the employee is on continuous travel status. Employees should expect to receive travel expense reimbursement approximately five (5) working days of the Agency's receipt of a proper travel claim.
- B. Employees must have an approved travel order before incurring any travel expenses for travel to a Temporary Duty (TDY) location.
- C. An employee may be eligible for per diem when authorized to perform official travel at least 50 miles away from his/her Official Station or Residence of Record (ROR) and is in "travel status" for more than 12 hours.
- D. When an employee in travel status becomes incapacitated by illness or injury, the employee or authorized representative should notify the employee's supervisor as soon as possible to discuss and determine expenses eligible for reimbursement for return travel to the employee's official duty station in accordance with applicable law and Government-wide rule or regulation.

## **SECTION 7. METHOD OF TRANSPORTATION**

Employees are expected to travel using the method of transportation that is most economical to the Government as determined by the Agency. When an employee does not travel by the method required by the Agency, any additional expenses will be borne by the employee.

## **SECTION 8. LOCAL TRAVEL**

Local travel is official travel 50 miles or less from the employee's permanent duty station (PDS), AWS, or residence of record (ROR).

## **SECTION 9. USE OF ELECTRONIC TRAVEL SYSTEM**

- A. Employees must use the Agency's designated Electronic Travel System to make all reservations for common carrier transportation, lodging, and rental car services.
- B. If an employee uses an unauthorized travel agent, unauthorized Electronic Travel System, or unauthorized travel service such as Orbitz, Travelocity, etc., the employee will be responsible for all additional costs that result from the unauthorized use including, but not limited to, higher fares and rates, service fees, and cancellation penalties.

## **ARTICLE 22: DETAILS AND TEMPORARY PROMOTIONS**

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 252-0-1, Details Program](#), dated September 22, 2015, except as otherwise provided in this Agreement.
- B. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 253-11-1, Merit Promotion and Internal Placement](#), dated June 23, 2015, except as otherwise provided in this Agreement.

### **SECTION 2. DETAILS**

- A. Definition. Detail. The temporary assignment of an employee from his or her position of record to an established different position or set of unclassified duties for a specified period with the employee returning to his or her official position of record at the expiration of the detail. An employee who is on a detail is considered to be occupying his or her position of record for all purposes.
- B. Purpose. Details may be used to complete emergency or short-term projects; satisfy temporary unmet workload requirements; maintain office functions during a reorganization, reduction-in-force, or rightsizing; or to accomplish the mission requirements of FEMA or other Federal agencies. Supervisors and managers must follow the proper policies and procedures to fairly and accurately affect personnel actions.
- C. Selecting Employees for Details. Consideration shall be given to those employees within the organizational unit where the detail is to occur or to those employees who show an interest or volunteer.

### **SECTION 3. TEMPORARY PROMOTIONS**

- A. Definition. Temporary Promotion. A promotion to a higher graded position on a time limited basis.
- B. Employees selected for temporary promotions must meet the requirements for basic eligibility in accordance with applicable regulations of the Office of Personnel Management and perform the grade-controlling duties of that position.
  - a. Employees need not be selected under competitive promotion procedures unless the promotion is for more than 120 days.
  - b. With the exception of deployments, employees selected for temporary promotions to a higher graded position for more than 120 days, will be paid at the higher grade for the period they occupy the higher graded position.
- C. Temporary positions that are expected to last more than 120 days will be advertised and filled using competitive selection. If a temporary promotion which was not advertised and filled using noncompetitive selection (i.e., a temporary promotion that was not

expected to last more than 120 days) and it is later determined that it will exceed the one hundred and twenty (120) days, will be advertised for competitive selection at that time.

- D. Upon termination of a temporary promotion, the employee will be returned to the position from which he/she was promoted, at the pay rate to which he/she would have been entitled had he/she not received the temporary promotion.

## **ARTICLE 23: REASSIGNMENT AND RELOCATION**

### **SECTION 1. GENERAL**

- A. When the Agency determines that it is necessary to reassign or physically relocate employees, it will provide advanced notification to the Union. Reassignments and relocations (that are not part of a reorganization as covered in Article 24, Reduction of Force and Transfer of Functions will be coordinated with the Union in accordance with procedures outlined in this Article). The Parties agree to the implementation measures contained in this Article to minimize adverse impact upon employees.
- B. This Article describes the exclusive negotiated impact and implementation procedures the Agency will take when reassigning or relocating an employee.

### **SECTION 2. DEFINITIONS**

For the purpose of this Article:

- A. “Relocation” means a physical move of the employee (s) in a work unit from one worksite (e.g.: office, suite of offices, shop, building) to another.
- B. “Reassignment” means the change of an employee from one position to another without promotion or change to lower grade, level or band.
- C. “Effective Date” means the calendar day on which the reassignment or relocation will take effect.

### **SECTION 3. UNION NOTIFICATION**

- A. When the Agency determines to reassign or relocate up to 10 employees, the Agency will give notice to the Union no less than 14 calendar days prior to the effective date. For reassignments which involve more than 10 employees, the notice to the Union will be provided 21 calendar days prior to the effective date. For geographic relocations which involve more than 10 employees, the notice to the Union will be provided 30 calendar days prior to the effective date. The Parties agree that the notification will include the following information:
  1. Reason(s) for reassignment or relocation,
  2. A list with the names, positions, titles and grades of all affected employees and their supervisors,
  3. Floor plans and seating chart(s), drawn to scale, for both the existing and proposed organizational locations,
  4. Whether the proposed relocation is intended to be temporary or permanent and the expected duration of residency in temporary space,
  5. Projected adverse impacts regarding anticipated changes in Union Office space, parking facilities, lunch facilities, security provisions, and proximity to public transportation,
  6. Health and safety testing results, if any,
  7. A proposed implementation schedule and
  8. Any proposed written employee notices.

- B. After receipt of the initial notice including the information described above, the Union may, as soon as possible, but no later than seven (7) calendar days after receipt, request to meet with the Agency Representative for a detailed briefing of the reassignment or relocation and to discuss the proposed reassignment or relocation and the information supplied with the notification, or to comment or otherwise make suggestions concerning the implementation plan. The briefing and discussion will occur no later than five (5) calendar days after the Union's request. The Union concerns raised at the meeting regarding adverse impact which will result from the proposed change will be discussed.
- C. The Union may request additional information under 5 U.S.C. § 7114(b) (4), as outlined in Article 4, Employee Rights,
- D. If prior to final implementation, the Agency concludes that a modification of the original plan is necessary and employee assignments will change as a result, the Agency shall notify and discuss these changes with the Union.

#### **SECTION 4. SELECTION OF WORKSPACE**

- A. When employees will be assigned individual offices or workspaces in conjunction with relocation, employees will be allowed to choose their office or workspace in accordance with this section. Employees will be allowed to choose from among the offices or workspaces designated by the Agency for their assigned work unit. The Agency shall decide the placement of work units consistent with work demands that necessitate that functions be adjacent to one another or in specific locations (e.g., sharing equipment or customer service). The order in which employees will be offered a selection is as follows:
  1. Employees on a full time schedule
  2. Grade
  3. Time in grade
  4. FEMA seniority
  5. Service computation date
  6. Flip of a coin
  7. Part time employment status in the same sequence as above.

Federal employees will get priority for space over contractors and reasonable accommodation needs will be honored.

- B. When employees are being moved to an open work environment, without individually assigned workspaces, employees may select a workspace on a first-come-first-serve basis each day. Employees may be required to select a workspace from among the workspaces designated by the Agency for their assigned work unit. In work locations where there are regular workspaces and hoteling workspaces, federal employees will have priority over contractor employees for the regular workspaces.
- C. When employees are being moved to a limited seating environment, employees with a telework agreement may be required to share workspace and employees without a telework agreement may be allowed to select a permanent individual workspace. If

employees are allowed to select a permanent individual workspace, they may be required to choose from among the workspaces designated by the Agency for their assigned work unit.

## **SECTION 5. EMPLOYEE NOTIFICATION**

- A. The Agency will notify impacted employees of a reassignment or relocation no later than seven calendar days prior to the effective date.
- B. When an employee is being reassigned or relocated to a new geographic area, the employee will receive a notice which allows the employee to either accept or decline the geographic reassignment. The notice will include information regarding the consequences of declining the reassignment or relocation.

## **SECTION 6. COUNSELING**

Employees may receive counseling, upon request, from EAP or their servicing HR Specialist regarding a reassignment or relocation.

## **SECTION 7. DOCUMENTATION**

All reassignment and relocation actions will be documented in the employee's eOPF.

## **SECTION 8. PERMANENT CHANGE OF DUTY STATION**

- A. When an employee is reassigned to a duty station outside his/her current geographic area, the Agency will reimburse the employee for his or her move at the rates authorized in accordance with applicable law and Government-wide rule or regulation.
- B. When the Agency assigns an employee to a position requiring a move to another geographic area, the employee may be authorized a house-hunting trip for a reasonable period, not to exceed ten (10) calendar days, as authorized by the Agency. Expenses will be authorized in accordance with the Federal Travel Regulation.
- C. Employees reassigned to a different geographic area who relocate will be allowed a reasonable period of time, as necessary, to complete the move and report to work at the gaining activity.

## **SECTION 9. TRANSIT SUBSIDIES**

Within 10 days following any reassignment or relocation, employees are required to submit a new transit subsidy application, if needed.

## **SECTION 10. TRAINING**

When an employee is reassigned or relocated, sufficient training as determined by the Agency will be given to the employee to enable him or her to perform the duties of the new position, subject to the availability of funds.

## **ARTICLE 24: REDUCTION-IN-FORCE AND TRANSFER OF FUNCTION**

### **SECTION 1. GENERAL**

The Parties agree to follow the policies and procedures set forth in [FEMA Manual 256-2-1, Reduction in Force and Transfer of Function](#), dated November 6, 2015, except as otherwise provided in this Agreement

### **SECTION 2. DEFINITIONS (FEMA MANUAL 256-2-1, SECTION 1-6)**

- A. Reduction-in-Force. A reduction-in-force means the release of a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.
- B. Transfer of Function. The transfer of the performance of a continuing function from one competitive area and its addition to one or more different competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area. A Transfer of Function takes place when a function ceases in one competitive area and moves to one or more competitive areas that do not perform the function at the time of the transfer, and/or when the entire competitive area moves to another local commuting area without any organizational change.
- C. Reorganization. The planned elimination, addition, or redistribution of functions or duties in an organization.
- D. Furloughs. The placement of an employee in a temporary non-duty and non-pay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year.

### **SECTION 3. WORKFORCE ADJUSTMENTS**

The Agency and the Union recognize that unit employees may be seriously and adversely affected by a Reduction in Force (RIF), reorganization, or transfer of function action. The Agency recognizes that attrition, reassignment, furlough, hiring freeze, and early retirement are among the alternatives to RIFs that may be available. This article describes the exclusive negotiated procedure the Agency will take when implementing a RIF, reorganization, or transfer of function. It is also intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency.

### **SECTION 4. ADVANCE EMPLOYEE NOTICE**

- A. Except in the case of furloughs due to circumstances beyond the control of the Agency, the Agency agrees to provide affected employees as much advance notice of reduction-in-force as is administratively possible. All such notices shall contain the information required by Office of Personnel Management regulations.
- B. The content of the specific notice shall include the following information:
  1. The action to be taken, the reasons for the action, and its effective date;
  2. The employee's competitive area, competitive level, subgroup and service date, and the three most recent ratings of record received during the last four years;
  3. The place where the employee may inspect the regulations and records pertinent to his/her case;
  4. Reasons for retaining a lower-standing employee in the same competitive level; ,
  5. Information on reemployment rights;
  6. The employee's grievance or appeal rights.

## **SECTION 5. UNION NOTIFICATION**

- A. Except in the case of furloughs due to unforeseeable circumstances beyond the control of Management, prior to official notification of employees, the Union will receive fourteen (14) calendar days advance notice of any pending reduction-in-force or transfer of function, furlough, or reorganization.
- B. The notice will contain the approximate number and types of positions affected and the approximate date of the action.
- C. If requested by the Union, the Parties will meet in order for the Agency to present information on the reduction-in-force, transfer of function, furlough, or reorganization procedures and address Union questions. In addition, upon request, the Parties will meet to discuss any concerns prior to implementation. All meetings must take place within seven (7) calendar days of the notice.
- D. All time limits stated above may be extended by mutual consent of the parties involved.

## **SECTION 6. MINIMIZING ADVERSE IMPACTS**

To the extent feasible, management agrees to utilize the following means and methods to accomplish reductions:

- A. Placement Assistance. The Agency will assist and counsel affected employees in seeking placement opportunities with other Federal agencies or elsewhere in the community;
- B. Reemployment Within DHS. In the event career or career-conditional employees are separated by reduction-in-force, the Agency will refer these names to the Department of Homeland Security (DHS) for inclusion on the appropriate reemployment priority list in accordance with the governing regulations.
- C. Retention Registers. Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for their positions for

which they are qualified, down to and including those in the same or equivalent grade as the position offered by Management. If separation occurs, this includes all positions equal to or below the grade level of their current positions. Affected employees shall have the right to the assistance of the Union when reviewing such lists of records.

- D. Minimizing the Impact of Automation and Technology Changes. The Parties agree that technological changes such as automation and re-engineering are desirable for the efficient operation of the Agency. However, decisions and actions concerning the impact of these changes should be made with a full awareness of employee morale. In light of this, when changes affect the classification or status of positions covered by the Agreement, Management will meet with the Union to discuss these changes. The Agency will attempt to minimize the adverse impact of these changes by using attrition and reassignment.
- E. Cooperation of Agencies. In the event of the transfer of function of the Agency activity to another government entity, FEMA will solicit the cooperation of the gaining agency in explaining the ramifications of such a change to the Union.
- F. Employee Training. FEMA agrees that, when an employee is reassigned due to the elimination of their position, sufficient training as determined by Management will be given to the employee to enable him or her to perform the duties of the new position, subject to availability of funds.
- G. Retirement and Severance Counseling. Counsel employees on individual rights relating to such matters as retirement and severance pay.

## **SECTION 7. EMPLOYEE RESPONSE TO NOTICE OF OFFER**

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee will have until the end of the specific notice period during which to accept or reject the offer made.

## **SECTION 8. REASSIGNMENT TO A DIFFERENT COMPETITIVE AREA**

- A. Reassignment of employees outside of their competitive area will be avoided when possible. When the Agency is not able to place an employee within the competitive area and the employee accepts a reassignment requiring a move to another competitive area, the Agency will reimburse the employee for his or her move at the rates authorized in accordance with applicable law and Government-wide rule or regulation.
- B. When the Agency assigns an employee to a position as a result of a transfer of function or RIF requiring a move to another geographic area, the employee may be authorized a house-hunting trip for a reasonable period, not to exceed ten (10) calendar days, as authorized by the Agency. Expenses will be authorized in accordance with the Federal Travel Regulation.

- C. Employee reassigned to a different commuting area who relocate will be allowed a reasonable period of time, as necessary, to complete the move and report to work at the gaining activity.

## **SECTION 9. USE OF DUTY TIME**

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of a RIF under this Article will be granted up to eight (8) hours, while in a duty status without charge to leave for the following:

- A. Preparing, revising and reproducing job resumes and/or job application forms;
- B. Participating in employment interviews; and
- C. Reviewing job bulletins, announcements, etc.

## **SECTION 10. CONTINUATION OF EMPLOYEE BENEFITS**

Upon separation, the employee can continue health insurance free for 31 days after separation. An employee can then elect to continue receiving benefits under FEHBP. The employee must request it in writing within 60 days of separation (or within 60 days of receiving a notice from the agency that FEHB coverage is terminating).

## **SECTION 11. COMPENSATION DURING LAPSE OF APPROPRIATION**

Any employee appropriately authorized to perform work during a lapse of appropriations shall be compensated in accordance with applicable regulations.

## **SECTION 12. UNEMPLOYMENT BENEFITS**

The Agency will provide any employee to be separated by RIF or transfer of function with instructions on obtaining information regarding unemployment benefits available to them.

## **SECTION 13. DETAILS**

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

## **SECTION 14. EMPLOYEES DEMOTED BY AGENCY ACTION**

For a period of two years, affected employees demoted by an action covered by this Article will be re-promoted to vacancies as they occur according to the following criteria:

- A. The Agency determines to fill the vacancy;
- B. The employee has the requisite skills and abilities for the position without the need for additional training; and
- C. Another qualified employee does not have a higher retention standing.

## **ARTICLE 25: CONTRACTING OUT**

In the event the moratorium on expending funds in support of OMB A-76 competition activities is removed by Congress, the Agency shall notify the Union and the Union shall have the right to request to reopen CBA negotiations on the issue of contracting out. Any agreement reached between the Parties will be incorporated as an Appendix to this Agreement.

## ARTICLE 26: HEALTH AND SAFETY

### **SECTION 1. GENERAL**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual \(FM\) 066-3-1, Occupational Safety and Health](#), dated January 28, 2013, except as otherwise provided in this Agreement.
- B. It is FEMA policy to provide to each FEMA employee a place of employment which is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm. This shall be accomplished by the implementation of a comprehensive Occupations Safety and Health (OSH) program that reflects the OSH requirements of Section 19 of the OSH Act of 1970; Executive Order 12196; and 29 CFR Part 1960.
- C. The Agency shall maintain an awareness of extreme weather considerations and the condition of employees operating within their span of control during emergencies and training and ensure that adequate steps are taken to provide for their safety and health.
- D. Each employee shall comply with the standards, rules, regulations, and orders issued by the Agency in accordance with section 19 of the OSH Act, Executive Order 12196, 29 CFR Part 1960, and FM 066-3-1.
- E. Specific procedures for preventing and abating safety and health hazards will be developed through FEMA Worksite OSH committees and must be approved by FEMA Safety Officials before implementation in accordance with 29 CFR 1910, DHS 066-1, and FM 066-3-1.
- F. The Agency will consider input from the Union when purchasing furniture, with regard to ergonomic compatibility and employee safety and health.

### **SECTION 2. STANDARDS**

The Agency shall comply with OSH Act of 1970, Executive Order 12196, and the OSHA standards and requirements that are outlined in the FEMA OSH Program Manual.

### **SECTION 3. REPORTING & ABATEMENT OF UNSAFE AND UNHEALTHFUL WORKING CONDITIONS**

- A. The following procedure shall be used for submission of FEMA employee reports of unsafe or unhealthful conditions and/or practices in the workplace:
  1. All FEMA employees shall be encouraged to orally or in writing report unsafe or unhealthful working conditions and/or practices directly to their immediate supervisor who shall promptly investigate the situation and take appropriate corrective action. Supervisors shall keep the reporting employee informed of all actions taken;
  2. Any FEMA employee (or authorized employee representative) may submit a written OSH report of an unsafe or unhealthful working condition and/or practice directly to the facility OSH Office or the FEMA Headquarters OSH Program Office;

3. Upon receipt of an OSH hazard report, the facility OSH Office shall log in the OSH report, contact the originator by telephone to acknowledge receipt, and discuss the seriousness of the reported OSH hazard. The facility OSH Office shall advise the responsible supervisor that an OSH hazard has been reported;
  4. The facility OSH Office shall investigate all OSH reports brought to its attention. Alleged imminent danger situations shall be investigated within 24 hours. Potentially serious situations shall be investigated within 3 days;
  5. The facility OSH Office shall provide an interim or complete response in writing to the originator of written reports within 10 working days of receipt. If no significant OSH hazard is found to exist, the reply shall include the basis for the determination.
- B. If there is an emergency situation in an office or work area, the first concern is for the employees and the public they serve. Should it become necessary to evacuate a building, the Agency will take precautions to guarantee the safety of employees and the public.
- C. Abatement Procedures:
  1. In accordance with 29 CFR 1960, an abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within 30 calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions.
  2. The facility Worksite OSH Committee will be timely notified and consulted, and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement plan.
  3. Prior to the establishment of an official abatement plan, the Agency shall take interim steps for the protection of the employees.
  4. The Union will provided a copy of the abatement plan.
- D. Any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/ or tagged-out or rendered inoperative, as appropriate .
- E. At the request of the Union, the Agency will provide information regarding the qualifications of an inspector.

#### **SECTION 4. SAFETY & HEALTH TRAINING**

- A. The Agency shall provide safety and health training for employees, including specialized job safety training, appropriate to the work performed by the employee. This training will address the Agency's and the facility's OSH Program, with emphasis on the rights and responsibilities of employees.
- B. Employees and Union representatives will be provided training as described in FEMA Manual, FM 066-3-1.

#### **SECTION 5. NO REPRISAL FOR REPORTING**

The Agency agrees there will be no restraint, interference, coercion, discrimination, or reprisal directed against an employee for filing a report of an unsafe or unhealthful working condition or for participating in Agency Occupational Safety and Health Program activities or because of the exercise by an employee on behalf of him/herself or others, of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, 29 CFR 1960, or FM 066-3-1.

## **SECTION 6. WORK-RELATED INJURIES AND ILLNESSES**

- A. Employees must report any and all work-related injuries to their supervisor as soon as possible but no later than 24 hours and in accordance with FM 066-3-1. If the supervisor is not available, then reports on any work related injuries may be submitted to any supervisor in the employee's chain of command.
  1. Employees must use the [Employees' Compensation Operation & Management Portal \(ECOMP\)](#) to file claims. The employee has the opportunity to report to the health facility/Nurse, his/her personal physician for treatment, or the hospital emergency room for treatment and for assistance in the completion of necessary reports.
  2. The Office of Workers' Compensation Program (OWCP) should be promptly notified to ensure timely processing of necessary reports and employee claims. Employees who choose to file a claim may contact an OWCP Specialist for guidance on the necessary forms and the process for submission. Upon request, employees will be informed of their rights under the Federal Employees' Compensation Act, as amended in 1974.
- B. If an employee has sustained a work-related injury or illness and the treating physician of the injured employee (or nurse of the Agency) certifies that the employee is not capable of performing their full duties, the employee may submit a written request to his or her supervisor to perform limited duties. If the request is denied, the employee may submit a written proposal to perform limited duty to his or her second-level or third-level supervisor. The proposal shall identify what limited duties the employee believes are available and documentation from a treating physician indicating the employee is capable of performing such limited duties. The Parties understand that this provision does not obligate Supervisors to create limited duty work or limited duty overtime work but only to temporarily assign it to qualified employees to the extent that it is available and necessary. Approved limited duty assignments will be reviewed every 30 days.
- C. Within seven calendar days after receiving information of an occupational injury or illness, the Safety Officer must be notified by the employee to ensure appropriate information concerning such injury or illness shall be entered on the log. The record shall be completed within seven calendar days after the receipt of information that an occupational injury or illness has occurred.

## **SECTION 7. EMERGENCY PREPAREDNESS**

- A. Each facility shall have an emergency action plan in accordance with FM 066-3-1. The FEMA Facility Emergency Action Plan shall cover those designated actions FEMA employees must take to ensure employee safety from fire and other emergencies. The

Agency agrees that the first concern when an employee is injured on the job is to make certain that the employee gets prompt emergency medical treatment. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical treatment.

- B. When it is necessary to assist an employee to return home because of illness or incapacitation or to provide transportation to a medical facility, the Agency will assist in arranging for transportation.
- C. The Agency agrees to maintain Automatic External Defibrillators (AED) and adequate first aid supplies at each FEMA facility. All employees will have reasonable access to these supplies.

## **SECTION 8. INDOOR AIR QUALITY**

- A. The parties agree that all employees are entitled to work in an environment containing safe and healthful indoor air quality.
- B. The Agency shall work with GSA and building owners to provide safe and healthful indoor air quality by conforming to laws, guidelines, and regulations, such as those promulgated by OSHA, EPA, and GSA.
- C. On-site air monitoring, investigations, and inspections for hazardous substances (e.g. asbestos, mold) will be conducted in accordance with FM 066-3-1.

## **SECTION 9. SAFETY AND HEALTH RECORDS**

The Agency agrees to compile and maintain records required by the OSH Act and FM 066-3-1. The Agency agrees to ensure access by employees, former employees, and Union representatives to records/logs of facility occupational injuries and illnesses (including copies of accident reports) and to the annual summary of these in accordance with 29 CFR 1960, consistent with FOIA and Privacy Act requirements.

## **SECTION 10. HAZARDOUS DUTY PAY AND ENVIRONMENTAL DIFFERENTIAL**

Environment Differentials and Hazardous Duty will be paid in accordance with OPM regulations and 5 CFR Part 532. Employees who believe they may be entitled to Hazardous Duty Pay or Environmental Differential may raise the issue with their supervisor or the Office of the Chief Component Human Capital Officer (Staffing). The Employee will be provided with a response in writing.

## **SECTION 11. FIREFIGHTER OCCUPATIONAL MEDICAL SURVEILLANCE**

- A. FEMA shall conduct an occupational medical surveillance program to assist firefighters to maintain optimum health on the job.
- B. Firefighters will be given a comprehensive medical/physical exam pursuant to NFPA 1582 or as individual conditions warrant or as FEMA may require.

- C. Firefighters will schedule their physicals. Employees will notify supervisor as soon as possible with their scheduled physical date.
- D. FEMA will provide firefighters with all vaccinations for communicable diseases in accordance with applicable law, rules, and regulations. An assessment of the employee's coronary heart disease risk factors will be made yearly.
- E. FEMA will provide additional specialized testing, by a service provider designated by the Agency, for the purpose of determining fitness for duty if a medical condition is found. The employee will not be charged for this additional testing.
- F. The Respiratory Protection Program requires that all firefighters will be tested in accordance with 29 CFR 1910.134.
- G. When an annual physical examination discloses a medical condition that in the opinion of the examining physician is permanent and will prevent a firefighter from performing the full range of his or her assigned duties, the employee has the right to have such findings reviewed by his or her private physician at the employee's expense, and the employee will be given up to 30 days to obtain and present this additional medical information.

## **SECTION 12. PERSONAL PROTECTIVE EQUIPMENT**

The Agency will provide required personal protective equipment (PPE) to employees. Employees requesting a replacement must submit their replacement requirement to their supervisor so the PPE item can be ordered if needed. If not immediately available, the Agency will attempt to obtain the item as quickly as possible. Once the replacement item is received or available the employee will be notified. After notification the damaged or worn items must be turned into their supervisor or designated point of contact and the employee will receive the new PPE item.

## **ARTICLE 27: FITNESS-FOR-DUTY**

### **SECTION 1.**

- A. Fitness for Duty Examinations: The Agency may direct an employee to undergo a fitness for duty examination only under those conditions authorized in OPM regulations (currently found at 5 C.F.R. Part 339, Medical Qualification Determinations) at the time the examination is requested or ordered. If the Agency has reason to believe that an employee no longer meets applicable medical standards or physical requirements, it will adhere to the OPM regulations and any supplemental Agency policies in order to determine whether the employee still meets the necessary requirements/standards for employment.
- B. Under governing regulations, the Agency may order a psychiatric examination (including a psychological assessment) after an Agency ordered general medical examination indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the employee or others; or the position requires a psychiatric examination.
- C. Office of Workers Compensation Programs: The procedures in this article are not designed to address benefit claims filed with the Department of Labor, Office of Workers Compensation Programs (OWCP), for alleged job related injuries. Employees filing such claims must adhere to the OWCP rules, regulations, and policies.

### **SECTION 2.**

When the Agency orders or offers a medical examination under the provisions of the OPM regulations, it will inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate. Except in emergency situations, an employee is entitled to at least seven (7) days advance written notice that s/he is to take a fitness for duty examination or psychiatric examination. In the event that the employee is requested to set up an appointment, s/he will be allowed reasonable time to do so. The notice will set forth the reasons for the examination (including the behavior the Employer has observed), and the general scope and character of the examination.

### **SECTION 3.**

The Parties recognize that, pursuant to 5 C.F.R. 339.303(b), the Agency retains the authority to designate the examining physician. The Employee shall be provided an opportunity to submit medical documentation from his/her personal physician or practitioner to the designated examining physician.

### **SECTION 4.**

It is Agency policy to utilize a licensed practitioner or physician and provide the examining physician with a copy of the applicable standards and requirements for the position, and/or a detailed position description of the duties of the position.

### **SECTION 5.**

The Agency will pay all costs for the examination(s) of employees which it orders or offers under the provisions of this article. Employees must pay for medical examinations conducted by a private physician or practitioner where the purpose of the examination is to secure a benefit sought by the employee such as but not limited to a request for a reasonable accommodation, sick leave, advanced sick leave, or FMLA.

## **SECTION 6.**

The report of an examination conducted pursuant to this Article will be available to the employee pursuant to 5 C.F.R. 293.504(b).

## **ARTICLE 28: WORKER'S COMPENSATION**

### **SECTION 1. INFORMATION**

- A. The Agency agrees that as soon as practical after an employee notifies his or her manager and/or the appropriate Workers' Compensation Coordinator (WCC) of an occupational disease/illness or traumatic injury/illness in the performance of duty, it will advise the affected employee of his/her rights and responsibilities under the Office of Workers' Compensation Program (OWCP), and the Federal Employees Compensation Act (FECA). Additionally, an employee may at any time during the process, request information concerning the employee's rights under this program. These rights include the following:
1. The employee's right to file a claim for compensation benefits;
  2. The types of benefits available, including continuation of pay (COP), disability and death benefits;
  3. The procedures for filing claim will be posted on the Agency's Intranet;
  4. The option to request to use compensation benefits if approved in lieu of sick or annual leave;
  5. The right to representation (e.g., attorney, Union representative, family member or friend), upon written designation, with regard to his/her claim; and
  6. Employees in a travel status are covered 24 hours a day for all reasonable incidents of their temporary duty in accordance with applicable Government-wide law, rule or regulation.
- B. The Agency will post information regarding Workers Compensation on the Agency intranet site including WCC contact information and information on filing claims.

### **SECTION 2. DEFINITIONS**

- A. Traumatic injury/illness – A condition of the body caused by a specific event or incident, or series of events or incidents, within a single work day or shift. Such condition must be caused by an external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected; e.g., a fall that causes a broken bone.
- B. Occupational disease or illness – A condition produced by the work environment over a period longer than a single work day or shift, e.g., carpal tunnel syndrome. Occupational disease or illness may be produced by such work environment factors as systemic infections, continued or repeated stress or strain, exposure to toxins, poisonous fumes, noise, etc.
- C. Continuation of Pay (COP)—If an employee sustains a job-related traumatic injury, the Agency must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days, in accordance with the requirements of the FECA. COP is subject to taxes and all other payroll deductions that are made from regular income.

- D. Disability – Partial or total incapacity due to a work-related injury, to earn the wages the employee was receiving at the time of the injury.

### **SECTION 3. PROCEDURES FOR FILING CLAIMS FOR WORKERS' COMPENSATION BENEFITS**

- A. As soon as possible after experiencing a job-related injury or illness, the employee should contact his/her manager and/or the Workers' Compensation Coordinator (WCC).
- B. In order to file a claim for workers' compensation benefits, the employee should electronically complete and submit for his or her manager's verification the OSHA 301 and Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, or Form CA-2, Notice of Occupational Disease and Claim for Compensation, and/or other necessary forms, located on Department of Labor's DOL's Employees' Compensation Operations and Management Portal (ECOMP) website located at <https://www.ecomp.dol.gov>. Detailed instructions for completing the necessary forms are located on the ECOMP website.
- C. The appropriate sections of the forms should be filled out by the employee as soon as possible, but no later than 30 calendar days from the date of the occurrence. If the employee is incapacitated, this action may be taken by someone acting on his/her behalf.
- D. If an employee sustains a work-related traumatic injury that requires immediate medical examination and/or treatment, the Agency will authorize such examination and/or treatment by providing the employee with a Form CA-16 (Authorization for Examination and/or Treatment) in accordance with the requirements of the FECA.
- E. If the employee's Form CA-2, Notice of Occupational Disease and Claim for Compensation is approved, the employee will have the option of buying back any used leave of 40 hours or more and having it reinstated to the employee's account in accordance with the requirements of the FECA.
- F. Employees have certain rights under the OWCP/FECA program relating to such issues as selection of a medical provider for treatment of an occupational disease or illness or traumatic injury/illness, light duty assignment, transfer of medical care, etc. The Agency agrees not to interfere in the employee's exercise of these rights, as set forth in 20 C.F.R. Part 10.
- F. In order for employees to protect their right to workers' compensation benefits, employees should file their notice of injury or occupational disease within 30 days of the occurrence. However, even if a notice was not filed within 30 days, the FECA (20 C.F.R. Part 10, Subpart B) allows for claims to be filed within 3 years of the occurrence and, under certain circumstances beyond 3 years.
- G. The Agency will assist employees in obtaining technical information regarding the proper procedures for filing claims with the DOL/OWCP. Such assistance may be obtained by

employees electronically or by making contact with the appropriate WCC. Employees should also visit the [www.dol.gov](http://www.dol.gov) website for workers' compensation information.

#### **SECTION 4. CONTINUATION OF PAY**

- A. In order to be eligible for COP, an employee must file a Form CA-1 within 30 days of the date the traumatic injury/illness occurred and ensure that medical evidence supporting disability resulting from the claimed traumatic injury is provided to the Agency within 10 calendar days after filing the claim for COP on Form CA-1 and meet any other applicable requirements of 20 C.F.R. Part 10.210. Use the Agency's Intranet for Workers Compensation contact information.
- B. The Agency must advise the employee of their right to request COP and the need to elect among COP, annual, sick, or any other paid leave, (e.g., credit hours or compensatory time) or leave without pay, for any period of disability.
- C. Time lost on the day of traumatic injury that occurs during the employee's work shift does not count toward COP and should be charged as administrative leave.
- D. COP is not available to employees who file an occupational disease or illness claim (Form CA-2).
- E. If the employee's claim for compensation is disallowed by the DOL/OWCP or FECA, any of the forty-five (45) days of COP that were previously granted will be converted to sick leave, annual leave, earned credit hours and/or leave without pay or considered an overpayment of pay under 5 U.S.C. 5584. A conversion option is not available if an employee is convicted of fraudulently claiming or obtaining workers' compensation benefits under the Federal Employee's Compensation Act (FECA). The employee will be responsible for advising the Agency as to which form(s) of leave is (are) appropriate using WebTA (or successor system).

#### **SECTION 5. RETURN TO WORK**

- C. An employee's transition back to work depends upon a number of factors, including the nature of the injury, the length of the absence, and appropriateness and availability of workplace accommodations.
- D. Priority will be placed on efforts to:
  1. Establish clear and consistent return to work guidelines for the employee;
  2. Regular communication with the employee to provide guidance and clarification regarding the employee's duties and performance; and,
  3. Identifying reasonable workplace accommodations as necessary to maintain the effectiveness and productivity of the employee.
- E. The Agency will make all reasonable efforts to assign employees to duties consistent with the employee's medical needs or offer appropriate employment, in accordance with the requirements of 20 C.F.R. Part 10, Subpart F.

## **ARTICLE 29: TEMPORARY LIGHT DUTY ASSIGNMENTS**

### **SECTION 1. GENERAL**

- A. The Parties recognize that temporary light duty assignments are a tool for the Agency to continue the productivity of employees who have incurred injuries or illnesses off the job that temporarily prevent them from performing their assigned duties. Light duty assignments allow employees to return to work and accomplish the Agency mission while temporarily limited by illness or injury. The Parties agree that Supervisors are not required to create light duty work but only to temporarily assign it to qualified employees to the extent that it is available and necessary.
- B. The Agency may assist workers injured or incapacitated off the job in returning to work consistent with their medical condition and this Article. The Parties agree that the length of employee absence from the job because of illnesses or injuries may be reduced by making light duty available to affected employees in a manner consistent with their prescribed medical condition or limitations and the needs of the Agency.
- C. Any employee who has been injured or incapacitated and is able to perform light duty may be permitted to conduct such duties that he or she is able to perform when such duty is available, until he or she has recovered from the injury or incapacitation. This option is for injuries of a temporary, rather than permanent nature.
- D. Light duty assignments may continue for a maximum of 90 days per incident if supported by medical documentation. After 90 days, an employee must return to full duty status or request leave as appropriate. Notwithstanding this Article, an employee may pursue a reasonable accommodation at any time if they believe their medical condition is more than temporary in nature.
- E. Light Duty is defined as specific duties and responsibilities that may include all or part of an employee's regular position or that may be outside an employee's position and that do not conflict with the employee's current work restrictions as identified by the employee's attending physician or practitioner. Duties may be approved and performed for a full work shift (full time) or for shorter time periods (part time).

### **SECTION 2. LIGHT DUTY PROCEDURES**

- A. When an employee is injured or incapacitated off the job and is ordered by his or her attending physician or practitioner to work light duty, the employee may submit a written request to his/her immediate supervisor to perform light duties. The request must include a list of light duties the employee can perform and signed medical documentation from a physician or practitioner, which describes the employee's restrictions or indicates the employee may perform the listed light duties and specify the duration of the noted restrictions.
- B. Upon receipt of the request, the supervisor will respond within fourteen (14) days by either notifying the employee of the duties that will be made available consistent with the stated restrictions, or by denying the request.

- C. An assignment to light duty appropriate to an employee's specific medical condition may be granted for a temporary period, if such work is available and the assignment will not unduly disrupt work operations.
- D. If a supervisor denies a request for light duty, the supervisor will notify the employee of the reasons for the denial. If denied for medical reasons, the employee will be informed that he or she may provide additional supporting medical documentation for reconsideration.
- E. If an extension of the light duty assignment is needed, the employee must request an extension supported by updated medical documentation from their physician or practitioner, prior to the expiration of the time period originally specified by the physician or practitioner. Temporary light duty assignments may not be extended beyond the maximum period stated in Section 1, Paragraph D.

### **SECTION 3. LIGHT DUTY FOR POLICE OFFICERS**

When making light duty determinations regarding Police Officers, the employee's law enforcement responsibilities will be considered. Various factors, such as the officer's ability to handle a weapon, operate a police vehicle, and make an arrest will be considered when determining what light duty assignments are appropriate.

### **SECTION 4. LIGHT DUTY DUE TO PREGNANCY**

A request for accommodation due to pregnancy to protect the health of a pregnant employee and/or her unborn child is also covered by this Article. Subsequent to the confirmation of the pregnancy, the employee may request light duty, excusal from wearing a uniform, and other accommodations in accordance with Section 2, above. The period of accommodation may continue for the duration of the pregnancy without the need for additional medical documentation and without regard to the limitation in Section 1, Paragraph D. A pregnant employee will not be involuntarily restricted from performing her regular duties solely because of her pregnancy.

### **SECTION 5. OVERTIME WHILE ON LIGHT DUTY**

Employees will not be precluded from being assigned overtime work based solely on their assignment to light duty, as long as light duty overtime work is necessary and working overtime is consistent with the employee's medical restrictions.

### **SECTION 6. LEAVE FOR MEDICAL APPOINTMENTS**

During the time the employee is on light duty, necessary time may be requested and approved for medical and physical therapy appointments. Leave for such appointments will be processed in accordance with **Article 18, Absence and Leave**.

## **ARTICLE 30: DRUG TESTING**

### **SECTION 1.**

The Parties agree to follow the policies and procedures set forth in [FEMA Manual 123-20-1, Drug-Free Workplace Program](#), dated July 28, 2014, except as otherwise provided in this Agreement.

### **SECTION 2.**

All tests and selection procedures will be in accordance with applicable law and Government-wide rule or regulation.

### **SECTION 3.**

Ordinarily, employees will be granted duty time to take FEMA-sponsored tests that may be used for promotion and/or placement in FEMA.

### **SECTION 4.**

Prior to implementing a new drug test or changes in the application of ongoing drug tests, the Agency will provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

## **ARTICLE 31: EMPLOYEE ASSISTANCE**

### **SECTION 1. EMPLOYEE ASSISTANCE PROGRAM**

#### **A. Program Purpose**

1. The Agency's Employee Assistance Program (EAP) offers initial assessments, short-term counseling, and referrals to employees for a wide range of problems that affect the employee's job performance and/or conduct. Problems covered by EAP include family/relationship issues, workplace concerns, alcohol and drug problems, personal and emotional difficulties, health and behavioral issues. EAP also offers coaching services, financial services, legal services, and other assistance.
2. Employees who think EAP services might be helpful are encouraged to voluntarily seek counseling and information on a confidential basis. Early intervention may be helpful in assisting the employee in solving personal issues. No employee will be required to use EAP services unless this requirement is agreed to in writing as part of a mutually agreed upon settlement of a work-related matter.
3. Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance, and to refer the employee to EAP for assistance.
4. EAP information will be posted on the FEMA intranet site.

#### **B. Confidentiality**

1. The Parties recognize that employee trust and confidence in the program are keys to its success. The Agency will require the EAP provider to maintain all confidential information and records concerning employee counseling and treatment in accordance with applicable laws, rules, and regulations.
2. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program.

#### **C. Voluntary Participation**

1. An employee will not receive a negative performance rating, be denied promotion opportunities, or be subject to disciplinary action or adverse action because of a request for counseling or referral assistance.
2. Although the existence and functions of counseling and referral programs will be publicized to employees, no employee will be required to participate or be penalized for merely declining referral to EAP services unless part of a mutually agreed upon settlement agreement.

#### **D. Relationship to Other Actions.** While EAP is intended to assist employees, EAP is not intended to shield employees from corrective action. Pursuant to a written settlement agreement, the Agency may hold in abeyance an administrative action so long as the employee agrees to participate in EAP, does not engage in new instances of misconduct or performance deficiency, and successfully completes the treatment to which he/she is referred. If the employee fails to meet the requirements of the agreement, the employee

may be subject to further administrative action. This provision only applies in the first instance of the problem(s) requiring EAP assistance and does not apply if severe, egregious, or criminal misconduct is involved.

- E. Administrative Leave. A supervisor or manager may grant up to 1 hour (or more as necessitated by travel time or unusual circumstances) of administrative leave for each EAP related counseling session, up to a maximum of 8 total hours, during the assessment/referral phase of rehabilitation.
- F. Leave Associated with EAP. The Agency may grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under the EAP, in accordance with applicable leave policies.

## **SECTION 2. CHILD CARE**

Current child care information may be found at the following sites: General Services Administration, EAP, OPM. The Parties agree to explore the possibility of participating in Federal child care services where not currently available to FEMA employees.

## **ARTICLE 32: VIOLENCE IN THE WORKPLACE**

### **SECTION 1.**

The Parties agree to follow the policies and procedures set forth in [FEMA Policy 1200.1, Violence in the Work Place](#), dated November 22, 2000, except as otherwise provided in this Agreement.

### **SECTION 2.**

The Parties are committed to maintaining a work environment free from violence, threats of violence, harassment, intimidation, bullying, and other disruptive behavior. These behaviors in our workplace will not be tolerated.

### **SECTION 3.**

Employees have the responsibility to report all disruptive behavior to their immediate supervisor, Labor and Employee Relations, or the Office of Chief Security Officer. All reports of incidents will be taken seriously and dealt with appropriately.

### **SECTION 4.**

Unacceptable behavior can include oral or written statements, or gestures that communicate a direct or indirect threat of physical harm. Individuals who commit such acts may be removed from the premises and may be subject to disciplinary action.

## **ARTICLE 33: INVESTIGATIONS**

### **SECTION 1.**

This Article contains the policy and procedures to be followed when bargaining unit employees of the Agency are the subject of, or involved with the investigative and administrative interviews. These policies and procedures will be followed by the Agency and Union representatives and employees participating in these interviews/examinations.

### **SECTION 2.**

An employee being interviewed by an official representative of the Agency in connection with either a criminal or non-criminal matter has certain entitlements/rights regardless of who is conducting the interview.

### **SECTION 3. NOTICE**

- A. When the Agency knows in advance that it is going to conduct an interview of an employee who is the subject of the investigation, the employee will receive at least two days advanced notice, if practicable, that an interview will be conducted.
- B. When an employee is interviewed by the Agency, and the employee is the subject of an investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated.

### **SECTION 4. EMPLOYEE RIGHTS**

At the commencement of, or as soon as it might become applicable during the course of, an investigatory interview, employees will be given notification of all applicable rights including Weingarten, Miranda, Beckwith, Kalkines, and Garrity. This notice shall be on a form that the employee signs at the beginning of the interview or such time as the need is identified.

### **SECTION 5. UNION REPRESENTATIVE ROLE**

- A. In accordance with 5 U.S.C. § 7114(a)(2)(B), a representative of the Union will be given the opportunity to be present at any examination, involving an employee if the employee reasonably believes (either prior to or during the examination,) that a disciplinary or adverse action may result and the employee requests such representation.
- B. When the person being interviewed is accompanied by a representative furnished by the Union, in both criminal and non-criminal cases, the role of the representatives includes:
  - (1) Conferring with the employee;
  - (2) Clarifying questions; and,
  - (3) Objecting to intimidation tactics and confusing questions.
- C. The role of the Union representative is to assure that the investigation is conducted in a fair and respectful manner. However, a Union representative may not disrupt an investigation by transforming the interview into an adversarial contest or end the interview.

### **SECTION 6. AGENCY RESPONSIBILITIES**

- A. The Agency investigator may, at their discretion, meet in advance with the Union Representative for the purpose of discussing the rights of the employee; the role of the Union Representative and the investigator's plans for conducting the interview, breaks, conferences.
- B. The Agency investigator is responsible for conducting and controlling the interview. In the event of a dispute between the Agency investigator and the Union representative, the Agency investigator may give the employee the choice of proceeding without Union representation or terminating the interview.
- C. At the conclusion of an investigation governed by this Article which does not result in the proposal of any criminal or administrative action, the Agency will notify the subject of the investigation of that fact, within 30 days.
- D. After the interview, the employee being interviewed will be provided with a copy of his or her signed statement and signed rights warning forms upon request. Agency representatives, employees, and Union representatives will not, except as specifically authorized, disclose information about an investigation.

## **ARTICLE 34: DISCIPLINARY AND ADVERSE ACTIONS**

### **SECTION 1. INTRODUCTION**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Manual 255-3-1, Employee Discipline Manual](#), dated December 29, 2015, except as otherwise provided in this Agreement.
- B. The Agency has the right and obligation to identify and correct both conduct and performance deficiencies. The objective of disciplinary and adverse actions is to promote the efficiency of the service.
- C. When appropriate, the Agency may consider an oral warning or counseling in lieu of a disciplinary or adverse action. The Agency generally follows the principle of progressive disciplinary action.
- D. Corrective action can include:
  - 1. Non-disciplinary actions, such as an oral warning, and an oral or written counseling;
  - 2. Disciplinary actions, such as letters of reprimand and suspensions of up to 14 days; and
  - 3. Adverse actions, such as suspensions of 15 days or more, reductions of grade or pay, furloughs of 30 days or less, and removal.
- E. Disciplinary or adverse actions will only be taken for such cause as promotes the efficiency of the service. The Agency will administer disciplinary and adverse action procedures and determine penalties for all employees in a fair and equitable manner.
- F. If the materials relied upon were not provided with the proposal, the employee or his or her designated Union Representative may contact the assigned Employee Relations (ER) Specialist for a copy of the material relied upon in proposing the action.
- G. When the Union is designated as the Representative in a disciplinary or an adverse action, the employee will notify the ER Specialist, in writing, of such designation. The designation will include the name, address, email address and telephone number of the Representative. When a representative has been designated, all correspondence will be served by the Agency to the Representative.
- H. If the employee elects not to be represented by the Union, correspondence will be addressed to the employee and it will remain the employee's prerogative as to whether he or she wishes to furnish the Union with copies of such correspondence.
- I. No record of a complaint determined to be unfounded or not investigated will be placed in the employee's Official Personnel Folder (OPF).

### **SECTION 2. DEFINITIONS**

For the purposes of this Article:

- A. Day is a calendar day, unless otherwise specified.
- B. Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work, funds, or other non-disciplinary cause.
- C. Reinstatement means to put back or establish again, as in a former position or state.

### **SECTION 3. TIMELINESS OF DISCIPLINARY AND ADVERSE ACTIONS**

- A. The Agency will initiate disciplinary or adverse action in a timely manner after the facts and circumstances giving rise to the action are fully uncovered. Circumstances that can delay the issuance of a proposal or decision letter, include but are not limited to, the need to conduct a thorough investigation and/or to obtain additional information regarding particular matters, the need to consult with Employee and Labor Relations or the Office of Chief Counsel, the requirement to follow specified procedures, and difficulties in arranging meetings where the employee and the deciding official are at different locations.
- B. Delay in taking a disciplinary or adverse action will not excuse an employee's misconduct or raise a due process issue, but may be a mitigating factor with regard to penalty.

### **SECTION 4. ALTERNATIVE DISCIPLINE**

- A. Alternative discipline is often of benefit to both the employee and the Agency. Alternative discipline is a non-traditional, constructive approach to addressing misconduct or performance issues, in lieu of a formal disciplinary or adverse action. The objectives of alternative discipline include:
  1. Improving communications and interpersonal working relationships between supervisors and employees;
  2. Correcting behavioral problems;
  3. Reducing the costs and delays inherent in traditional disciplinary actions; and
  4. Minimizing contentiousness between the Parties.

#### **B. Types of Alternative Discipline**

The types of discipline that may be imposed under this type of agreement include, but are not limited to:

1. Remedial training, as determined appropriate;
2. Reduced suspension;
3. Serving a suspension on non-duty days;
4. Serving a suspension in smaller pieces over the course of multiple pay periods to soften the financial impact;
5. Serving a suspension that exists only through a written agreement between the employee and the supervisor, with no loss of pay or duties. The documented suspension will constitute prior misconduct for purposes of progressive discipline;
6. Financial restitution;
7. Participation in the Employee Assistance Program and authorization for the counselor to talk to the supervisor; or
8. Last Chance Agreement. A Last Chance Agreement (LCA) is an agreement in which an employee against whom the Agency has proposed a disciplinary or

adverse action agrees to conform to certain conduct expectations for a set period of time in exchange for the Agency's commitment to hold the proposed action in abeyance for the same period and upon the successful conclusion, to forego imposing the action. If the employee does not meet his or her obligation under the agreement, then the Agency is free to impose the proposed disciplinary or adverse action without issuance of a new notice and opportunity to reply. In any subsequent grievance, appeal or other challenge to the disciplinary or adverse action, the only issues that can be reviewed are whether the employee conformed to the conduct expectations to which he or she had committed in the LCA and whether the Agency has abided by the provisions of the LCA.

- C. Alternative discipline is not an employee right. The decision to offer alternative discipline in any particular case is a matter solely within the Agency's discretion and may be offered, including at the specific request of the employee or his or her Representative, at any stage of the disciplinary process, as the Agency determines appropriate. An offer of alternative discipline establishes no precedent or presumption that it will be offered in any other case.
- D. Any alternative discipline must be contained in a written agreement between the employee and the Agency.

## **SECTION 5. DISCIPLINARY ACTIONS: REPRIMANDS**

- A. An Official Reprimand is considered the mildest level of a disciplinary action. An Official Reprimand is a written disciplinary action which specifies the reasons for the action, places the employee on notice that he or she may be subject to more severe disciplinary action upon any further offense, and informs the employee that a copy of the reprimand will be made a part of his or her OPF.
- B. An Official Reprimand will inform the employee that he or she has the right to file a grievance over the reprimand under the negotiated grievance procedure.
- C. An Official Reprimand will stay in the employee's OPF for a period of up to, but not exceeding, three years or upon resignation or retirement whichever is earlier. The supervisor has the discretion to determine the period the reprimand will stay in the OPF (i.e. one, two, or three years) and to withdraw the reprimand early. Although an Official Reprimand will no longer be considered a "prior disciplinary action" for purposes of progressive discipline after it is removed from the OPF, the fact that the employee has received the reprimand continues to serve as notice to the employee that the underlying conduct is unacceptable.
- D. Where an employee has consistently exhibited exemplary conduct and performance for one year following issuance of a reprimand, the Union may make a single written request that the reprimand be removed from the employee's OPF. The Agency will give good faith consideration to the request. The Agency's decision on such a request for early removal of the reprimand is final and not subject to the negotiated grievance procedure.

## **SECTION 6. DISCIPLINARY ACTIONS: SHORT-TERM SUSPENSIONS**

- A. An employee against whom a suspension for 14 days or less is proposed is entitled to:
  - 1. An advance written notice stating the specific reasons for the proposed action;
  - 2. The right to receive and review materials;
  - 3. At least 5 days to respond orally and/or in writing and to furnish affidavits and other documentary evidence to a deciding official; and
  - 4. Be represented by an attorney or other representative.
- B. The employee and/or his or her representative, if an employee, will be given a reasonable amount of official time to prepare and present an oral and/or written response to the proposal.
- C. If the deciding official determines to impose a suspension, the decision will include the applicable grievance and/or appeal rights.

## **SECTION 7. ADVERSE ACTIONS: REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION-IN GRADE, REDUCTION-IN-PAY, AND FURLOUGH OF 30 DAYS OR LESS**

- A. An employee against whom a removal, suspension for more than 14 days, reduction-in grade, reduction-in-pay, or furlough of 30 days or less is proposed is entitled to:
  - 1. An advance written notice of at least 30 days (except where a shortened notice period is authorized by law or regulation, such as 5 U.S.C. § 7513(b) and 5 CFR § 752.404(d)), stating the specific reasons for the proposed action;
  - 2. The right to receive and review materials;
  - 3. At least 14 days to respond orally and/or in writing and to furnish affidavits and other documentary evidence to a deciding official (normally at a level higher than the proposing official); and
  - 4. Be represented by an attorney or other designated representative.
- B. The employee and/or his or her representative, if an employee, will be given a reasonable amount of official time to prepare and present an oral and/or written response to the proposal.
- C. If the deciding official determines to impose an adverse action, the decision will include the applicable grievance and/or appeal rights.

## **SECTION 8. MEDICAL CONDITION**

An employee who wishes consideration of any medical condition that the employee claims has contributed to a conduct, performance or leave problem shall supply supporting medical documentation within the time limits allowed for the employee's response to the proposal notice.

## **SECTION 9. AGENCY DECISIONS**

- A. Where the Agency proposed a form of discipline or adverse action covered under Sections 6 or 7 of this Article, it will follow the procedural requirements of law, regulation, and this Agreement in rendering a written decision. The decision will state the specific reason(s), the effective date, the action to be taken, and the employee's appeal and grievance rights regarding the decision.

- B. In arriving at its written decision on any proposed disciplinary or adverse action, the Agency shall only consider the materials or information provided to the employee. The Agency shall consider any timely response that the employee and/or his or her representative made to a designated official and any timely medical documentation furnished.

## **SECTION 10. UPDATES TO PERSONNEL ACTIONS**

Where it has been ultimately determined through administrative action or applicable third party adjudication that a disciplinary or adverse action was unjustified or unwarranted, the Agency will take whatever action is required to correct the employee's personnel and pay records, in accordance with law and regulation.

## **SECTION 11. REQUESTS FOR TIME EXTENSIONS**

A reasonable request for an extension of time will be granted with a showing of good cause. Absent extraordinary circumstances, such requests must be made at least two workdays in advance of the deadline

## **ARTICLE 35: GRIEVANCE PROCEDURE**

### **SECTION 1. PURPOSE**

The purpose of this Article is to provide an equitable, simple and expeditious means of processing grievances. This negotiated procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances which come within its coverage, except as specifically provided below in Section 4.

### **SECTION 2. UNION INVOLVEMENT**

- A. Designation of a Union representative must be in writing and the designated representative must have the authority to act for the Union and Grievant. An employee may pursue a grievance with or without Union representation.
- B. When an employee grievance is presented to the Employer without Union representation, the Union will be provided a copy of the grievance and given an opportunity to be present during the proceedings unless the employee objects. If the employee desires representation, the Union shall be the sole representative for any grievance processed under this article.

### **SECTION 3. DEFINITION**

A grievance means any complaint:

- A. by any unit employee concerning their conditions of employment;
- B. by the Union concerning conditions of employment of any employee or alleged contractual violations by the Agency;
- C. by any unit employee, the Union, or 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, rule, or regulation affecting conditions of employment.

### **SECTION 4. EXCLUSIONS**

The following matters are excluded from this grievance procedure and any grievance consisting of the matter below may be rejected:

- A. Matters which are not subject to control by Agency management or control by the Union.
- B. Any claimed violation of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prescribed political activities).
- C. Disputes over retirement, life insurance or health insurance.
- D. A suspension or removal under Section 7532 of Title 5 U.S.C. (related to national security).
- E. Disputes over any examination, certification or appointment.
- F. Disputes over the classification of any position, which does not result in the reduction in grade, or pay of an employee.

- G. Disputes over the non-selection for promotion from a group of properly ranked or certified candidates. This does not apply to the right to grieve over improper procedures used during the selection process.
- H. Disputes over the termination of temporary promotion.
- I. A separation action while serving under a time limited appointment.
- J. The content of performance standards and elements.
- K. The non-adoption of a suggestion or disapproval of a discretionary award. This exclusion does not apply to the right to grieve over improper procedures used in the process.
- L. The separation of employees in their probationary period.
- M. Performance Improvement Plans, interim ratings, and any progress review that is not a rating of record. This exclusion does not apply to the right to grieve over improper procedures used in the process.
- N. Preliminary notice of a proposed action, which, if effected, would be covered by this Article or excluded by a. through e. above.
- O. An oral warning, oral counseling, or written counseling.
- P. Allegation of Discrimination. A complaint of discrimination which is listed in 5 U.S.C. § 2302(b)(1) if the employee has elected to use an available complaint procedure provided by statute, such as the Equal Employment Opportunity (EEO) process. The employee may use the grievance procedure if the employee chooses not to use the EEO process.
- Q. An appeal of an adverse action based on performance under 5 U.S.C. § 4302 or misconduct under 5 U.S.C. § 7512 if the employee has elected to file an appeal under the statutory appeal procedure provided under 5 U.S.C. § 7701 or its implementing regulations. The employee may use the grievance procedure if the employee chooses not to use the Merit Systems Protection Board (MSPB) statutory appeal procedure.
- R. Where the relief requested is the same, matters which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures.

## **SECTION 5. IDENTICAL OR "GROUP" GRIEVANCES**

In the case of identical grievances involving separate employees, the grievance may be consolidated by either Party. One employee's grievance shall be selected by the Union for processing as the "lead grievance." In such cases, all decisions on that "lead grievance" will be binding on the other grievance(s). The Parties agree that for the purposes of this section, identical grievances are those arising from a common set of circumstances which adversely

affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which are sufficiently alike so that a reasonable person would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances. If a Party objects to the consolidation, the question of consolidation shall be referred to FEMA's Alternative Dispute Resolution Division for a final determination.

## **SECTION 6. TIME LIMITS**

All time limits in this Article may be extended by mutual consent. Failure of the Agency to observe the time limits shall entitle the employee/Union to advance the grievance to the next step. Failure of the employee to observe time limits will automatically terminate the grievance.

## **SECTION 7. QUESTION OF GRIEVABILITY**

In the event either party should declare a grievance non-grievable, the original grievance shall be considered amended to include this issue.

## **SECTION 8. RESOLUTION AT LOWEST LEVEL POSSIBLE**

Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every effort will be made by the parties to settle grievances at the lowest possible level. Improving such communications, and applying fairness and good faith in the actions between the employees and managers through good working relationships is encouraged in order to promote efficiency and to avoid grievable matters. At any time during the grievance process, the Parties may attempt to resolve a grievance informally. If relief is granted, and employee accepts the grievance will be closed at that step, and no further processing will take place. If the grievant continues to the next step, the relief offered at the lowest step will not be implemented.

## **SECTION 9. INDIVIDUAL GRIEVANCE PROCEDURE**

Grievances initiated by an employee or the Union on behalf of an employee or employees will be processed in accordance with this section.

**A. STEP 1.** A Step 1 grievance must be presented within fifteen (15) calendar days from the date the grievant knew or should have known the action or decision occurred.

Grievances must be presented in writing to the management official one level above the manager responsible for the action or decision being grieved. Grievances may be rejected if the following information is not included:

1. Name(s) of the grievant(s);
2. The specific occurrence or condition giving rise to the grievance;
3. The provisions of law, regulation, or Agreement allegedly violated, misapplied or misinterpreted;
4. Any relevant evidence, and
5. The remedy sought. The relief sought must be personal to the employee. A Grievant may not seek to have another individual penalized or rewarded through this procedure.

Within 28 calendar days after receiving the grievance, the management official shall render his or her written response.

**B. STEP 2.** If the grievant is not satisfied with the Step 1 grievance decision, or if the Step 1 decision was not provided in the allotted time, the grievant may file a Step 2 grievance in writing to the management official one level above the Step 1 official. The Step 2 grievance must be presented within 7 calendar days after receipt of the Step 1 decision or within 7 calendar days of the date the Step 1 decision was due. The step 2 grievance must include:

1. Step 1 grievance and response (if any); and
2. Any additional relevant evidence.

Within 7 calendar days of receipt of the Step 2 grievance, the Step 2 management official (or designee) will meet with the grievant and/or representative if a meeting was requested in the Step 2 grievance. Within 21 calendar days after the date of the meeting or within 28 calendar days after receipt of the Step 2 grievance if no meeting was requested, the Step 2 management official shall render his or her written response.

**C. STEP 3.** If the grievant is not satisfied with the Step 2 grievance decision, or if the Step 2 decision was not provided in the allotted time, the grievant may file a Step 3 grievance in writing to the management official one level above the Step 2 official. The Step 3 grievance must be presented within 7 calendar days after receipt of the Step 2 decision or within 7 calendar days of the date the Step 2 decision was due. The Step 3 grievance must include the following information:

1. Step 1 grievance and response (if any);
2. Step 2 grievance and response (if any); and
3. All evidence relevant to the grievance.

Within 28 calendar days after receipt of the Step 3 grievance, the Step 3 management official shall render his or her written response.

**D. Arbitration.** If the grievant is dissatisfied with the Step 3 decision, the Union President (or designee) may invoke arbitration as provided in the Arbitration Article. During arbitration the grieving party may only present evidence that was submitted with the Step 3 grievance.

## **SECTION 10. UNION OR AGENCY GRIEVANCE PROCEDURE.**

Grievances initiated by the Employer or the Union will be processed in accordance with the following steps:

**A. STEP 1.** The grieving party will present the grievance in writing to the other party within fifteen (15) calendar days from the date the party became aware of the action or incident being grieved. A Union grievance must be presented in writing to the Labor Relations Officer. An Agency grievance must be presented in writing to the Council President.

Grievances may be rejected if the following information is not included:

1. The specific occurrence or condition giving rise to the grievance;
2. The provisions of law, regulation, or Agreement allegedly violated, misapplied or misinterpreted;
3. Any relevant evidence, and
4. The corrective action desired.

The Parties will meet within 10 calendar days after receipt of the grievance to discuss the

grievance. The party filing the grievance will be furnished a decision by the other party within 10 calendar days from the date of this meeting. Nothing herein will preclude either party from attempting to resolve the grievance informally.

- B. **Arbitration.** If either the Union or Management is dissatisfied with a Step 1 decision, the Union President or Labor Relations Officer may invoke arbitration as provided in the Arbitration Article. During arbitration the grieving party may only present evidence that was submitted with the Step 1 grievance.

## **SECTION 11. SERVICE OF PROCESS**

- A. Service of grievances and the decisions thereon, including arbitration notices shall be accomplished by email or personal delivery. Grievances and responses will be deemed timely if the email is sent or personal delivery is accomplished by midnight, local time, within the specified time limit.
- B. Response time periods will begin to run from the date the recipient receives a document in person, the date indicated on an automatically generated read receipt if sent between government email accounts or the date of a return email acknowledging receipt if sent to or from a non-government account. If no read receipt or acknowledgement is sent from the recipient, the relevant time period will begin on the day after the date the email was sent. The Parties agree that they will act in good faith in receiving documents and will not attempt to evade the service of documents.

## **ARTICLE 36: ARBITRATION**

### **SECTION 1. INVOKING ARBITRATION**

Arbitration may only be invoked by the Union or Agency. Invocation for arbitration will be filed with the Agency labor relations officer (employee or Union grievance) or the Council President (Agency grievance). If the Agency and the Union fail to settle any grievance processed under the negotiated grievance procedures, such grievance, upon written request by the Union, may be submitted to arbitration within thirty (30) calendar days from the date the Step III individual grievance decision is received or was due or the Step 1 Union or Agency grievance decision is received or was due. Demands to invoke arbitration must clearly identify the grievant and subject matter.

### **SECTION 2. SELECTION OF ARBITRATOR**

- A. No more than 5 calendar days after the date of the notice to invoke arbitration, the moving party will request the Federal Mediation and Conciliation Services (FMCS) to provide a list of seven impartial persons to act as an arbitrator.
- B. Within 7 calendar days after receipt of the FMCS list the Parties shall select an arbitrator. The moving party will make initial contact with the defending party to select an arbitrator. If for any reason the defending party refuses to participate in the selection of an arbitrator, the moving party will be empowered to select the arbitrator from the list.
- C. Arbitrator selection may be done by in person, by email, telephone, or web conferencing. If the parties cannot mutually agree on one of the listed arbitrators, then Agency and the Union will alternatively strike one potential arbitrator from the list of seven and will then repeat the procedure until one name remains. The remaining person shall be the duly selected arbitrator. The parties will flip a coin to determine who strikes the first name.
- D. Following the selection, the moving party will, within 7 calendar days, notify the FMCS of the name of the arbitrator selected. A copy of the notification will be served on the other party.
- E. If an arbitrator is not selected within 30 calendar days of the invocation, the arbitration will be dismissed with prejudice.
- F. The time limits may be extended by mutual consent.

### **SECTION 3. THRESHOLD ISSUES**

- A. Arbitrators Decision. All disputes of grievability or arbitrability in a grievance advanced to arbitration shall first be raised by written submission to the arbitrator prior to any proceedings on the merits. The arbitrator is without jurisdiction to accept evidence or issue a decision on the merits until a decision on the threshold issue(s) of grievability/arbitrability has been rendered.
- B. Postponement. If either party raises an arbitrability question later than fourteen (14) calendar days prior to the date scheduled for a hearing, the other party shall have the right

to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification, as to the arbitrability issue, shall be borne by the party raising the question.

#### **SECTION 4. PRE-ARBITRATION CONFERENCE**

Not later than the 30<sup>th</sup> day after the date that arbitration is invoked, the Parties shall conduct a pre-arbitration settlement conference. At such settlement conference, the Parties shall make good faith efforts to reach a resolution of the case. The content of such settlement discussions are confidential. Any statements made during the settlement discussions specific to the settlements, and any portions of written materials revealing the contents of such settlement discussions may not be introduced in proceedings before the arbitrator.

#### **SECTION 5. TRANSCRIPTS**

- A. Each party will inform the other no later than fourteen (14) calendar days prior to the start of the arbitration hearing whether it desires a transcript of the hearing.
- B. If the Parties mutually agree upon the need for a transcript, they shall equally share the cost of the transcript and the Agency will make the arrangements for securing a transcript.
- C. If the Parties do not agree on the need for a transcript, the party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other party change its mind and seek a copy of the transcript, it shall then be responsible for half of the costs.

#### **SECTION 6. PROCEEDINGS**

- A. Each party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Failure of either party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator or dismissal of the grievance.
- B. No later than fourteen (14) calendar days prior to the hearing, the parties shall exchange proposed: issue(s) statement, list of witnesses with a brief synopsis of the anticipated testimony for each witness, and a list of joint exhibits. No later than seven (7) days prior the hearing, the Parties will attempt to agree on and submit to the arbitrator a joint list of issues, witness(es), and exhibit(s). If the Parties cannot agree on the joint list of issues, witnesses, or exhibits, the Parties may submit individual proposed lists to the arbitrator. A copy of the submission will be simultaneously served on the other party. It shall be at the sole discretion of the arbitrator to determine the issue(s), witness(es), and exhibit(s).
- C. The arbitrator shall render his or her decision as quickly as possible; but, in any event, no later than thirty (30) calendar days after the conclusion of the hearing unless the Parties mutually agree to extend the time limit. If no exception is filed during the thirty calendar day period beginning on the date the award is served, the award is final and binding. Either party will take the actions required by the final award within sixty (60) calendar days after it becomes final and binding, except as provided by the Award.

## **SECTION 7. COSTS**

- A. The arbitrator's fee and the expenses of the arbitration, with the exception of transcripts, shall be borne equally by Agency and the Union.
- B. Any fee or expense incurred in the process of requesting a panel of arbitrators shall be borne by the moving party.
- C. Fees to be paid by the Agency will be governed by existing regulations. Travel and per diem shall not exceed that authorized by government-wide regulations.
- D. Cancellation Costs. The Parties will share any cancellation costs equally when the pending issue is settled prior to the hearing. If one party cancels the hearing, that party shall be responsible for paying any costs associated with the cancellation.

## **SECTION 8. LOCATION OF HEARING**

The arbitration hearing will be held, if possible, on Agency's premises during regular business hours. The arbitration will normally be held within the commuting area of the grievant unless the grievant has transferred from the site of the dispute. In such cases the hearing will be held at the site of the dispute unless both Parties agree to hold it in another location. Arbitration hearings regarding group or consolidated grievances will be held at a mutually agreed upon site.

## **SECTION 9. PARTICIPANTS**

- A. The Union shall designate, in writing, one representative to represent the Union or Grievant in the Arbitration. The designated representative shall have authority to act for the Union and Grievant. The Union will be permitted to appoint a Union representative as an observer in any arbitration hearing at which the Union has designated a non-FEMA individual as its representative.
- B. Duty Status. All participants in the hearing shall be in duty status or on official time, if they would otherwise be in a duty status. If a hearing is scheduled on what would otherwise be a participant's day off, the Agency will adjust the employee's schedule so that the employee would be in a duty status.
- C. Travel and Per Diem. Where the witnesses are not within the commuting area of the hearing site, and where the witnesses are deemed approved by the arbitrator, Agency will pay travel and per diem for them. Should there be a disagreement as to the relevance of a witness where travel and per diem is required, the Union will pay travel expenses and the issue will be presented to the arbitrator who will decide on the relevancy of the testimony. If the arbitrator decides that the witness is relevant, the arbitrator will so state in the decision and Agency will pay travel and per diem at a rate no greater than that authorized by the government travel regulations.

## **SECTION 10. AUTHORITY OF ARBITRATOR**

- A. The Agency and the Union agree that the jurisdiction and authority of the selected arbitrator and his/her opinions, as expressed, will be confined exclusively to the

grievance at issue between the parties. The arbitrator is restricted to making a decision specifically and solely on the question(s)/issue(s) submitted. The arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award and the Federal Labor Regulations Authority sets aside all or a portion of the award, or for enforcement purposes. However, any adverse appeals shall be presented to the appropriate appellate jurisdiction.

- B. The Arbitrator does not have the authority to disregard, circumvent, or otherwise proceed in any matter inconsistent with any provisions of this Agreement.

## **SECTION 11. EX PARTE COMMUNICATIONS**

With the exception of the discussions regarding scheduling, both Parties agree that there will be no communication with the arbitrator unless both Parties are participating in the communication or one party has expressly agreed to the communication by the other party with the arbitrator.

## **ARTICLE 37: ALTERNATIVE DISPUTE RESOLUTION (ADR)**

### **SECTION 1.**

The Agency and the Union are committed to the use of ADR problem solving methods to foster a good labor-management relationship.

### **SECTION 2.**

ADR is an informal process which seeks early resolution of employee, labor, and management disputes. Participation in the ADR process must be voluntary.

### **SECTION 3.**

ADR uses non-adversarial methods to help the Parties seek a fair and equitable resolution. ADR is a positive approach to joint problem-solving that might not be available through the traditional methods of resolving issues. ADR focuses on the parties' real interests, rather than their positions or demands.

### **SECTION 4.**

ADR may be initiated at any time if all interested parties (i.e., supervisor, employee, and employee's union representative) are willing to participate in the ADR process. Any individual participating in the ADR process has a right to request and have a representative present. Resolutions under ADR cannot be in conflict with or supersede any agreements between the Parties.

### **SECTION 5. PRINCIPLES OF ADR**

Either party can refuse to participate or withdraw from the ADR process. The ADR Advisor has discretion to determine whether a certain case or issue is suitable for ADR and what type of ADR tool is appropriate. The ADR process involves many tools for resolving workplace issues, including, but not limited to, facilitation, conciliation, conflict coaching, team dynamic inquiry, mediation, and/or any combination thereof.

### **SECTION 6. GROUP COMPLAINT**

A group of employees with the same issues may present one complaint as a group. The group should identify one person as its representative. If the employees in the group work for different supervisors, the Director, LER Branch, should be consulted by ADR to identify the appropriate supervisory official to whom the group should present the complaint.

### **SECTION 7. CANCELLATION OF A COMPLAINT**

A complaint may be cancelled for the following reason(s):

- A. At the request of the complainant;
- B. If the complainant does not furnish required information and/or does not proceed in a timely manner with the advancement of the complaint.

### **SECTION 8.**

ADR may NOT be appropriate when:

- A. A definitive or authoritative resolution of the matter is required for precedential value,

and such a proceeding is not likely to be accepted generally as an authoritative proceeding,

- B. The matter involves or may bear upon significant questions of government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Agency,
- C. Maintaining established policies are of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions,
- D. The matter significantly affects persons or organizations that are not parties to the proceedings.
- E. A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and
- F. The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

## **SECTION 9.**

The Agency shall make available to employees information describing the Agency's ADR processes and contact information for the [ADR division](#).

## **ARTICLE 38: EQUAL EMPLOYMENT OPPORTUNITY**

### **SECTION 1. STATEMENT OF POLICY**

In accordance with [FEMA Directive, FD 112-14, Equal Opportunity and Affirmative Appointment](#), dated July 10, 2015, and [FEMA Equal Employment Opportunity \(EEO\) Policy Statement, 401-123-1](#), dated October 13, 2015, the Agency will not discriminate based on race, color, religion, sex, national origin, age (over 40), disability, genetic information, reprisal, or sexual orientation.

### **SECTION 2. CHOICE OF FORUM**

An employee has the option of filing a grievance in accordance with Article 35 or a complaint under the statutory EEOC Federal Sector EEO complaint procedure, but not both.

### **SECTION 3. ANNUAL TRAINING**

The Agency will provide and all employees must comply with annual EEO training requirements.

### **SECTION 4. EEO RESPONSIBILITIES**

- A. Managers and Supervisors. With respect to conduct between officials, supervisors, managers and employees, Agency officials, supervisors and managers have a responsibility to maintain a discrimination-free environment to the extent required by law.
- B. Fellow Employees. With respect to conduct between fellow employees, employees have a responsibility to maintain a discrimination-free environment to the extent required by law.
- C. Sexual Harassment.
  1. The Agency agrees to provide all bargaining unit employees a work atmosphere free from sexual harassment.
  2. In accordance with Agency policy, any employee who believes he or she has been the victim of sexual harassment or has knowledge of sexual harassment must promptly report it.
  3. Where an allegation of sexual harassment is brought to the attention of the Agency, the Agency will take appropriate action.

### **SECTION 5. USE OF EEO COUNSELORS**

- A. EEO Contact Information. The Agency shall make available contact information for employees to contact an EEO Counselor.
- B. Neutrality of EEO Counselor. The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.

- C. Confidentiality. The EEO Counselor shall not reveal the identity of an aggrieved employee who has come to him or her for counseling, except when authorized to do so by the aggrieved employee, until a written EEO complaint has been filed.
- D. Independence of EEO Counselor. EEO Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.

## **SECTION 6. UNION RIGHTS**

- A. Notification of Change. If at any stage of the complaint process under procedures covered by this Article, the Agency determines to resolve the complaint by making changes to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification.
- B. Conflict with Contract.
  - 1. Notice and Opportunity to Bargain. Where the corrective or remedial action to be taken as a result of statutory adjudicatory procedures would conflict with or appear to conflict with, the provisions of this Agreement, the Agency shall afford the Union reasonable notification and opportunity to negotiate the impact of the Agency's action effectuating the decision.
  - 2. Priority of Appellant Decisions. The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (of, i.e., the Merit Systems Protection Board, the Equal Employment Opportunity Commission or the Federal courts).
  - 3. Union Right to be Present. If the employee elects to pursue the complaint under the grievance procedures of this Agreement and he or she elects to process the grievance without representation, the Union shall have the right to be present at any meeting between the Agency and the employee concerning the grievance unless the employee objects to the presence of a union representative.

## **SECTION 7. DIVERSITY MANAGEMENT ADVISORY COUNCIL (DMAC)**

- A. The parties agree that the Union may participate with the Agency in DMAC for the purpose of advising the Administrator's Office on the continuing implementation of diversity and EEO issues as it applies to bargaining unit employees.
- B. Diversity and EEO issues are appropriate topics of discussion for local partnership meetings.

## **ARTICLE 39: PARKING AND TRANSPORTATION**

### **SECTION 1. PARKING SPACES, WHERE AVAILABLE**

- A. To ensure that FEMA-controlled parking facilities are operated in a manner responsive to the needs of the Agency, assignment of FEMA-controlled parking spaces will be in compliance with applicable Government-wide parking policies issued by the General Services Administration (GSA), Federal Property Management Regulations (FPMR), and Code of Federal Regulations provisions. At locations where parking is provided, parking fees, if any, shall be assessed to recover the cost of operating a parking facility
- B. All employees must register their vehicle(s) in accordance with Agency parking policies. Employees will notify designated Agency officials of any changes as required under Agency parking policies (e.g., new tags, new vehicle). Employee parking permits must be displayed in accordance with Agency parking policies.
- C. Employees may request and receive a parking space for medical purposes in accordance with applicable law, Government-wide rule or regulation, and Agency parking policies.

### **SECTION 2. SHUTTLE SERVICE**

When provided by the Agency, shuttle service will be made available to employees. Accommodations will be made for employees with disabilities. The Agency will monitor the shuttle service to ensure safe and courteous operations.

### **SECTION 3. TRANSIT SUBSIDY**

- A. The Parties agree to follow the policies and procedures set forth in [FEMA Directive 254-1, Commuter Transit Subsidy Benefits Program](#), except as otherwise provided in this Agreement. The Agency will continue to provide public transit subsidies to the extent authorized by regulations and based on the availability of funds.
- B. Based on the availability of funding, employees will be paid a transit subsidy up to their eligible commuting costs, not to exceed the Internal Revenue Service (IRS) tax-free maximum per month. Any increases or decreases in the IRS income-tax exclusion for transportation benefits during the term of the agreement will be implemented by the Agency by the next quarterly allotment of such benefits following the date of the increase or decrease, or as soon as funding is made available.
- C. Employees will follow the applicable procedures established for their official duty station location for the transit subsidy, which include completing [Public Transportation Benefit Program Application](#), FEMA Form FF 254-1-1.
- D. Employees who commute to and from work using their personal vehicles are not eligible for the public transportation subsidy payment. In order to be eligible for a transit subsidy, employees must only drive their personal vehicles to work on an infrequent basis (e.g., when required for a medical appointment). Obtaining a public transportation subsidy payment when ineligible for such a payment may serve as the basis for disciplinary action.

E. The Agency will publish ridesharing opportunities on the FEMA Intranet.

## **ARTICLE 40: DUES WITHHOLDING**

### **SECTION 1. VOLUNTARY UNION ALLOTMENTS**

In accordance with the Federal Labor Management Relations Statute, the Parties agree that, where a Unit employee voluntarily agrees to authorize the payment of union dues through payroll deduction, the following provisions will apply.

### **SECTION 2. EMPLOYEE ELIGIBILITY**

To be eligible to make voluntary allotment for the payment of the Union dues, an employee must meet all of the following requirements:

- A. Be a member of the Unit covered by this Agreement;
- B. Be in good standing with the Union;
- C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- D. Not have an allotment already in effect for the payment of Union dues

### **SECTION 3. REVOCATION OF ALLOTMENT**

- A. Request for Revocation. An employee may submit a request for revocation of an allotment at any time, but no revocation will be effected before the one-year period provided for in section 7115(a) of the Federal Labor Management Relations Statute has been satisfied. A revocation request form SF-1188 shall be completed by an employee and submitted in duplicate to the servicing personnel office.

Revocation will be made effective as follows:

1. Request Made Before One Year  
When revocation is requested before expiration of one year of dues withholding, the revocation will be effective on the first day of the first full pay period following the one-year anniversary of the date the employee authorized the withholding. The revocation request must be submitted before the start of the first full pay period following the one-year anniversary date.
2. Request Made After One Year  
When revocation is requested after dues withholding has been in effect for one year, then revocation will be effective on the first day of the first full period falling on or after December 1<sup>st</sup> or June 1<sup>st</sup>. The revocation request must be submitted prior to November 15<sup>th</sup> or May 15<sup>th</sup>.

The Union will be provided a copy of member revocations effected under this section within 14 calendar days by the servicing personnel office.

- B. Termination of Allotments. All allotments will be terminated if exclusive recognition should cease to exist for the covered Unit. An individual employee's allotment will be terminated when any of the following occur:
  1. The employee ceases to be a member in good standing of the Union.

2. The employee is promoted, reassigned, or transferred to a position outside any Agency-wide Unit wherein the Union holds exclusive recognition.
3. The employee is separated.

Termination of allotments as required above will be effective on the first full pay period following receipt of the appropriate notice by the servicing payroll office. Terminations required because of separation will be effective as of the date of separation. However, when separation occurs during a pay period, the allotment will be withheld from the employee's salary for that pay period.

#### **SECTION 4. UNION RESPONSIBILITIES**

It is the responsibility of the Union to:

- A. Ensure that allotments are voluntary.
- B. Fully inform members of the truly voluntary nature of the allotments.
- C. Ensure that its members understand that a revocation must be consistent with Section 3, above.
- D. Secure Form SF-1187, "Request for Payroll Deductions for Labor Organization Dues" and make the form available to its members.
- E. Inform and educate its members on the program for voluntary allotment for labor organization dues and the uses and availability of SF-1187.
- F. Certify by properly authorized Union official, on the SF-1187, the amount of dues to be withheld each biweekly pay period.
- G. Promptly forward completed SF-1187s to the servicing payroll office via OCCHCO.
- H. Certify to the servicing payroll office via OCCHCO where there is a change in the amount of labor organization dues.
- I. Promptly notify the servicing payroll office via OCCHCO when an employee with an allotment ceases to be a member in good standing of the Union.
- J. Promptly refund any erroneous remittance received, upon notice of discovery of an error.

#### **SECTION 5. AGENCY RESPONSIBILITIES**

- A. Completed SF-1187s submitted by the Union to the Agency must be processed in a timely manner, within 14 calendar days from receipt of SF-1187 by the Agency.
- B. Dues will be withheld on a biweekly basis conforming to regular pay period.
- C. The Agency will, subsequent to each pay period, transmit funds for the aggregate net of deductions to the organization or account the Union has identified. In addition, the Union

will be furnished a listing, by name, of all members, which identifies those for whom dues have been withheld, any new members, and members for whom no deductions were made because of LWOP, insufficient pay, etc. The Agency will provide the listing in alphabetical order on a quarterly basis.

- D. The Agency will initiate steps to reimburse the Union within 30 calendar days of notification from the Union for dues not deducted because of an administrative oversight, error, etc., made by the Agency beyond the employee's or Union's control. The Agency will provide the Union with updates on the status of the reimbursement and make best efforts to ensure payment within 90 days.

## **ARTICLE 41: DURATION OF AGREEMENT**

### **SECTION 1. EFFECTIVE DATE**

This Agreement will be implemented and become effective when it has been signed by the parties, after review and approval pursuant to 5 U.S.C. § 7114(c).

### **SECTION 2. DURATION OF AGREEMENT**

This Agreement will remain in full force and effect for a period of three (3) years after its effective date. At the expiration of three (3) years from its effective date, the Agreement will automatically renew for one-year periods until the Agency and the Union renegotiate and execute a new Agreement.

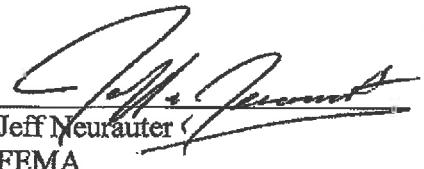
### **SECTION 3. RENEGOTIATION**

- A. The Agency or the Union may request to renegotiate the Agreement by submitting a notice in writing to the other party at least 90 days, but not more than 180 days, prior to the expiration date. Once the Agency or the Union submits a request to renegotiate under this Article, the entire Agreement is subject to renegotiation.
- B. When notice of intent to renegotiate is given, the parties shall meet to negotiate ground rules. This meeting shall occur not later than 30 days prior to the expiration date.
- C. The ground rules that are negotiated shall be reduced to writing and shall include, at a minimum, procedures governing submission of written proposals, scheduling and caucuses.
- D. The notice requirements in this Article do not apply to mid-term negotiations over impact and implementation.

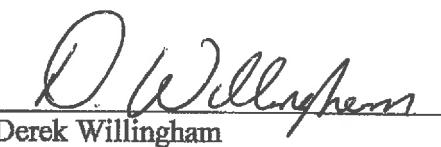
## EXECUTION OF AGREEMENT

The Federal Emergency Management Agency and the American Federation of Government Employees hereby execute this Collective Bargaining Agreement.

For the Agency:

  
Jeff Neurauter  
FEMA

For the Union:

  
Derek Willingham  
AFGE Council 56

Effective Date: December 5, 2016

# Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor

Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT

OMB Control Number: 1235-0003

Expires: 5/31/2018

## SECTION I: For Completion by the EMPLOYER

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_  
\_\_\_\_\_

Check if job description is attached: \_\_\_\_\_

## SECTION II: For Completion by the EMPLOYEE

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 20 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: \_\_\_\_\_  
First \_\_\_\_\_ Middle \_\_\_\_\_ Last \_\_\_\_\_

## SECTION III: For Completion by the HEALTH CARE PROVIDER

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax:(\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

**Mark below as applicable:**

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

\_\_\_\_ No \_\_\_\_ Yes. If so, dates of admission:  
\_\_\_\_\_

Date(s) you treated the patient for condition:  
\_\_\_\_\_

Will the patient need to have treatment visits at least twice per year due to the condition? \_\_\_\_ No \_\_\_\_ Yes.

Was medication, other than over-the-counter medication, prescribed? \_\_\_\_ No \_\_\_\_ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

\_\_\_\_ No \_\_\_\_ Yes. If so, state the nature of such treatments and expected duration of treatment:  
\_\_\_\_\_

2. Is the medical condition pregnancy? \_\_\_\_ No \_\_\_\_ Yes. If so, expected delivery date: \_\_\_\_\_

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition: \_\_\_\_ No \_\_\_\_ Yes.

If so, identify the job functions the employee is unable to perform:  
\_\_\_\_\_

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):  
\_\_\_\_\_

**PART B: AMOUNT OF LEAVE NEEDED**

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery?  No  Yes.

If so, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition?  No  Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?  
 No  Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

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Estimate the part-time or reduced work schedule the employee needs, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions?  No  Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?  
 No  Yes. If so, explain:

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Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency : \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per episode

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

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**Signature of Health Care Provider**

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Date

## PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**