

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System

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**DIRECTIVE TITLE: APPLICATION OF THE LAW ENFORCEMENT OFFICERS
SAFETY ACT OF 2004 (LEOSA) TO RETIRED LAW
ENFORCEMENT OFFICERS**

1. **PURPOSE and SCOPE.** This Directive establishes U.S. Immigration and Customs Enforcement ("ICE") policy with respect to qualified retired law enforcement officers and the application of the provisions of the Law Enforcement Officers Safety Act of 2004.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. The Law Enforcement Officers Safety Act of 2004, Public Law 108-277.
 - 2.2. Title 18 United States Code, Chapter 44, § 926C, Carrying of concealed firearms by qualified retired law enforcement officers.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive supersedes the previous Directive issued on this issue – Directive 1-2.0.
4. **BACKGROUND.** The Law Enforcement Officers Safety Act of 2004 (LEOSA) was signed into law on July 22, 2004. With certain limitations and conditions, LEOSA exempts qualified active and retired law enforcement officers from most State and local laws that prohibit the carrying of concealed firearms. LEOSA extends this exemption to any qualified law enforcement officer, as that term is defined by the Act, including local, State, and Federal law enforcement personnel. LEOSA, however, does not exempt these individuals from other Federal laws or regulations, including any restrictions on carrying firearms on transportation systems such as commercial airlines, nor does it extend to these individuals any new authority for the use of firearms or any new law enforcement powers.
5. **DEFINITIONS.**
 - 5.1. **Retired in good standing:** For the purposes of this Directive, an ICE employee, or an employee from an agency whose functions were merged into ICE, shall be deemed to have retired in good standing, unless at the time of his or her retirement:

- 1) There was a determination made or action initiated to remove, or proposing to remove, the employee from federal employment;
- 2) The employee was indefinitely suspended from duty with or without pay;
- 3) The employee's security clearance was suspended or revoked, or a proposal to suspend or revoke the clearance had been issued;
- 4) The employee was the subject of a pending psychological fitness for duty evaluation or had been found to be not psychologically fit for duty; or
- 5) The employee left the Agency following allegations of misconduct and/or unsatisfactory performance, or after being told they would be removed from the Agency.

5.2. Retired law enforcement officer: For the purposes of this Directive, a retired law enforcement officer is an individual who:

- 1) Retired in good standing from service with ICE as a law enforcement officer, other than for reasons of mental instability;
- 2) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- 3) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or retired from service with ICE, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by ICE; and
- 4) Has a nonforfeitable right to benefits under the retirement plan of ICE.

5.3. Qualified retired law enforcement officer: For the purposes of this Directive, a qualified retired law enforcement officer is an individual who:

- 1) Retired in good standing from service with ICE as a law enforcement officer, other than for reasons of mental instability;
- 2) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- 3) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or retired from service with ICE, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by ICE;

- 4) Has a nonforfeitable right to benefits under the retirement plan of ICE;
- 5) During the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;
- 6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- 7) Is not prohibited by Federal law from receiving a firearm.

5.4. **Retired Law Enforcement Officer Identification Card:** A photographic identification card issued by ICE that certifies the holder retired in good standing as a law enforcement officer from the agency as defined under this directive. The card can be used to satisfy the identification requirements under LEOSA, but provides the holder with no law enforcement powers or authorities, nor any authority to carry a firearm.

6. **POLICY.**

6.1. Pursuant to Section 3(a) of LEOSA (18 U.S.C. § 926C(a)), a qualified retired law enforcement officer may carry a concealed firearm if the qualified retired law enforcement officer carries identification which includes the following:

- a) A photographic identification **issued by ICE** in accordance with this Directive; and
- b) A certification **issued by the State** in which the individual resides that indicates that the individual has, within the most recent 12-month period, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

6.2. ICE shall be responsible only for preparing and issuing, upon request, a Retired Law Enforcement Officer Identification Card to law enforcement officers who have retired in good standing from the agency. This identification card shall be separate and distinct from an employee's retired credentials. Retired credentials issued by ICE will not be sufficient to satisfy the requirements of LEOSA or the definition of good standing included in paragraph 5.1 of this Directive.

6.3. Each Retired Law Enforcement Officer Identification Card shall, at a minimum, include the name of the individual, the individual's photograph, an identification number traceable to the bearer, the date the employee retired in good standing from service with ICE or an agency whose functions were merged into ICE, and the phrase "Retired Law Enforcement Officer."

- 6.4. Retired Law Enforcement Officer Identification Cards issued to law enforcement officers who have retired in good standing in accordance with this section carry no law enforcement powers or authorities, and do not provide the holder with any authority to carry a firearm. This disclaimer shall be clearly marked on each Retired Law Enforcement Officer Identification Card issued by ICE. All eligible retired law enforcement officers will be required to sign a written disclaimer acknowledging that the Retired Law Enforcement Officer Identification Card carries no such powers or authorities.
- 6.5. ICE shall not issue a Retired Law Enforcement Officer Identification Card under this section to a law enforcement officer who has retired in good standing until the individual signs a waiver indemnifying ICE for, and holding ICE harmless from, any resulting liability for use of or possession of a firearm carried under LEOSA authority.
- 6.6. ICE will not reimburse retired law enforcement officers for any cost associated with the certification requirement referenced in section 6.1(b) or provide firearm qualification testing.
- 6.7. ICE shall not train or certify retired employees to carry a firearm. A retired law enforcement officer must qualify pursuant to section 926C(d)(2)(B) of title 18, United States Code, and in accordance with state standards for active law enforcement officers.
- 6.8. It shall be within the discretion of ICE to issue a law enforcement officer who has retired in good standing a Retired Law Enforcement Officer Identification Card as described in this section. Should ICE make a finding that the subject is not eligible, or enter into an agreement in which the subject agrees that he or she is not eligible, the subject shall not be issued the Retired Law Enforcement Officer Identification Card described above.
- 6.9. If insufficient information exists to determine whether an applicant retired as a law enforcement officer in good standing, then ICE may in its discretion deny the applicant a Retired Law Enforcement Officer Identification Card.
- 6.10. With respect to the requirement that a qualified retired law enforcement officer "is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance," each former ICE employee seeking such state certification annually must meet state standards, if any, regarding alcohol or drug use by law enforcement officers authorized to carry a firearm.
- 6.11. This section shall apply to law enforcement officers who retired in good standing from service with ICE or an agency whose functions were merged into ICE.
- 6.12. Individuals who meet the definition of a qualified law enforcement officer under LEOSA may or may not meet the definition of a law enforcement officer under the Civil Service Retirement System or the Federal Employee Retirement System.

7. RESPONSIBILITIES.

7.1. Office of Human Capital (OHC) is responsible for:

- 1) Ensuring that information about the application of LEOSA and the process for obtaining the required Retired Law Enforcement Officer Identification Card is provided to all ICE law enforcement officers who are about to retire as part of their retirement processing;
- 2) Ensuring that disciplinary and psychological fitness for duty vettings are conducted on all applicants as of the date of their retirement;
- 3) Confirming that the applicant retired as a Law Enforcement Officer with the appropriate length of service; and
- 4) Preparing additional guidance as necessary to assist in the implementation of this Directive.

7.2. The Office of Professional Responsibility (OPR) is responsible for:

- 1) Providing, upon request, an application and information pertaining to LEOSA to current retirees;
- 2) Accepting all applications for Retired Law Enforcement Officer Identification Cards and reviewing them for completion;
- 3) Verifying the identity of the applicants;
- 4) Coordinating with the OHC, ensuring that all applicants are vetted for disciplinary issues and fitness for duty, and confirming the applicant retired as a Law Enforcement Officer with the appropriate length of service;
- 5) Coordinating with the Personnel Security Unit (PSU) to ensure that applicants are vetted to ensure that any security clearance they may have had was not suspended or revoked, or a proposal to suspend or revoke the clearance had not been issued at the time of retirement;
- 6) Compiling information received from OHC and the PSU and forwarding it to the appropriate Program Offices for good standing determinations;
- 7) Upon receiving approvals from the Program Offices issuing the Retired Law Enforcement Officer Identification Card to the applicant; and
- 8) Maintaining applicant records including vettings, approval, denial, and appeals letters, and any other material relied upon during the application and decision processes.

7.3. ICE Program Offices are responsible for:

- 1) Appointing a Management Official who shall:
 - a) Serve as the point of contact for the LEOSA program; and
 - b) Forward approved applications to OPR for those determined to have retired in good standing for issuance of the Retired Law Enforcement Officer Identification Card.
- 2) Appointing a Deciding Official who shall:
 - a) Review vetting information received from OHC and OPR and make a determination as to whether an applicant retired as a law enforcement officer in good standing;
 - b) Approve or deny applications; and
 - c) Draft denial letters, review them with OPLA, and sign and mail them to applicants determined to have not retired in good standing.
- 3) Appointing a Reviewing Official who shall review appeals of denied applications and make a final decision whether or not to overturn the original determination and issue the card (the same individual cannot serve as both the Deciding Official and Reviewing Official).

7.4. Office of the Principal Legal Advisor (OPLA) is responsible for:

- 1) Creating and maintaining the denial letter template;
- 2) Assisting Program Offices, as needed, in making good standing determinations;
- 3) Reviewing all denial letters for legal sufficiency; and
- 4) Assisting the Reviewing Official to review appeals of denied applications and assisting in final decisions regarding the issuance of Retired Law Enforcement Officer Identification Cards.

8. PROCEDURES.

- 8.1.** Retired law enforcement officers must prepare and submit a complete application package along with a current photo, either electronic or hard copy, to the OPR's Badge and Credential Program. The application must contain original signatures. Electronic signatures will not be accepted.

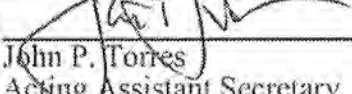
- 8.2. Once an application is received, the OPR's Badge and Credential Program will review the package to ensure completeness and forward complete applications to OHC and the PSU for vetting.
- 8.3. OHC and PSU will vet the applications for disciplinary action, fitness for duty, length of service and to ensure the employee's security clearance was not suspended or revoked, or a proposal to suspend or revoke the clearance had not been issued at the time of retirement.
- 8.4. OHC and PSU will return their findings to the Badge and Credential Program which will compile the results and forward them to the appropriate Program Office for a good standing determination.
- 8.5. The Deciding Official in the appropriate Program Office will review the information received from the Badge and Credential Program and determine whether an applicant retired in good standing. If necessary the Deciding Official may consult with OPLA in making this determination.
- 8.6. If it is determined that the applicant is eligible to receive a Retired Law Enforcement Officer Identification Card, the Program Office Management Official will notify the Badge and Credential Program which will immediately issue the card to the applicant.
- 8.7. If the Program Office determines that an applicant did not retire in good standing, it shall:
 - 1) Prepare a denial letter using the denial template created by OPLA (see the ICE Management Procedures (MAP)) that indicates their determination, the basis for this decision and informs the individual they have an opportunity to respond;
 - 2) Forward the letter to OPLA to review for legal sufficiency;
 - 3) Upon approval by OPLA, have the letter signed by the Deciding Official and mailed to the applicant; and
 - 4) Have the Management Official notify OPR's Badge and Credential Program of the applicant's denial and issuance of a denial letter.
- 8.8. If an applicant who is denied a Retired Law Enforcement Officer Identification Card exercises his right to appeal the decision, as provided for in the denial letter, the case will be forwarded to the Reviewing Official who will review the applicant's claim in coordination with OPLA and make a final decision whether to overturn the original determination and issue the card.

9. **ATTACHMENT.**

9.1. Request for Information and Acknowledgement Packet for a Law Enforcement Officer Safety Act (LEOSA) Identified Card Form.

9.2. ICE Law Enforcement Officer Safety Act (LEOSA) Acknowledgement Form.

10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved 
John P. Torres
Acting Assistant Secretary
U.S. Immigration and Customs Enforcement