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DIRECTIVE TITLE: LAW ENFORCEMENT AVAILABILITY PAY FOR CRIMINAL INVESTIGATORS

1. **PURPOSE and SCOPE.** This Directive establishes policy and procedures for the certification and payment of Law Enforcement Availability Pay (LEAP) to U.S. Immigration and Customs Enforcement (ICE) criminal investigators. It applies to criminal investigators in all ICE Program Offices.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. Title 5 United States Code (U.S.C.) § 5541(3), "Definitions – Law Enforcement Officer."
 - 2.2. 5 U.S.C. § 5542(b)(2)(B), "Overtime rates; computation."
 - 2.3. 5 U.S.C. § 5545a, "Availability Pay for Criminal Investigators."
 - 2.4. Title 5, Code of Federal Regulations (CFR), Part 550.103, "Premium Pay Definitions."
 - 2.5. 5 CFR 550.112(g), "Computation of overtime work; Time in travel status."
 - 2.6. 5 CFR 550.181-550.186, "Law Enforcement Availability Pay."
 - 2.7. 5 CFR 550.703, "Definitions."
 - 2.8. Senate Committee on Appropriations Report 103-286, June 16, 1994.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive supersedes ICE Directive 1-27.0 and all directives, memoranda, bulletins, manuals, handbooks, and other guidelines and procedures relating to the certification and payment of LEAP to criminal investigators issued by ICE or any of its Program Offices, the former U.S. Customs Service (USCS), the former U.S. Immigration and Naturalization Service (INS), the General Services Administration (GSA), or the Federal Protective Service (FPS) prior to the date of this Directive.
4. **BACKGROUND.** With the creation of the Department of Homeland Security (DHS), organizational components of the former USCS, INS, and GSA were consolidated to form

ICE. As a result, a unified ICE Directive on the administration of LEAP for ICE criminal investigators is needed.

5. **DEFINITIONS.** The following definitions are provided for the purposes of this Directive.
 - 5.1. **Availability Hours.** Case- or operation-specific hours in excess of 8 hours on days of the basic 40-hour workweek when a criminal investigator is determined by management to be generally and reasonably accessible to meet the needs of ICE.
 - 5.2. **Criminal Investigator.** An employee serving as a law enforcement officer, as defined in 5 U.S.C. § 5541(3), whose position is classified under the GS-1811 series and meets the requirements of 5 U.S.C. § 5545a(a)(2).
 - 5.3. **Designated Availability Hours (DAH).** Case- or operation-specific availability hours that are management-directed or subsequently approved during days of the basic 40-hour workweek.
 - 5.4. **Law Enforcement Availability Pay (LEAP).** Annual premium compensation paid to a criminal investigator to ensure the availability of the investigator for all unscheduled duty in excess of 8 hours on days that are part of a criminal investigator's basic 40-hour workweek, as well as unscheduled duty hours actually worked on days that are not regular workdays, such as scheduled days off. Payment of LEAP is authorized only for periods during which a criminal investigator receives basic pay.
 - 5.5. **Protective Duties.** Duties authorized by 18 U.S.C. § 3056(a) or by 22 U.S.C. § 2709(a)(3) that allow designated federal authorities the ability to specifically protect certain identified persons.
 - 5.6. **Regularly Scheduled Overtime Hours.** Overtime work which is officially ordered or approved in advance of the first day of the 7-day administrative workweek, and is:
 - 1) Overtime hours scheduled in excess of 10 hours on days which are part of a criminal investigator's basic 40-hour workweek; or
 - 2) Overtime work scheduled on a day which is not part of the basic 40-hour workweek, such as a scheduled day off.
 - 5.7. **Regular Workday.** Each day in a criminal investigator's basic workweek during which the investigator works at least 4 hours (5 U.S.C. § 5545a(a)(4)), excluding:
 - 1) Regularly scheduled overtime hours paid under 5 U.S.C. § 5542;
 - 2) Unscheduled duty hours paid under LEAP;
 - 3) Hours of ICE-approved training;

- 4) Time under official travel orders;
- 5) Hours of approved leave;
- 6) Hours of excused absence with pay, including paid holidays (5 CFR 550.183(b)(3));
- 7) Periods of leave without pay (LWOP) and LWOP compensated in compliance with the Federal Employees Compensation Act (FECA), commonly referred to as Office of Workers' Compensation Programs (OWCP) (5 CFR 550.185(a));
- 8) Periods of suspension for disciplinary reasons when an employee is in a non-pay status (5 CFR 550.182(g)); and
- 9) Periods in a part-time status of between 16 to 32 hours per administrative workweek (5 CFR subpart A, part 610).

5.8. **Unscheduled Duty.** For the purposes of availability pay, unscheduled duty consists of those hours during which a criminal investigator performs work or is determined by the employing agency to be available for work, that are not:

- 1) Part of the basic 40-hour workweek of the investigator; or
- 2) Regularly scheduled overtime hours (in advance of the workweek) (see Section 5.6).

6. **POLICY.**

- 6.1. ICE criminal investigators who are properly certified as prescribed in Section 8.1 and meet the qualification requirements in Section 8.2 will be paid LEAP for performing substantial amounts of unscheduled overtime duty. They may also be paid LEAP when management directs them to be available for unscheduled duty during specifically designated hours worked before the beginning or after the end of the workdays in the basic 40-hour workweek to meet the needs of ICE. Payment of LEAP may also be appropriate when management approves, after the fact, specific availability hours which are deemed necessary to meet ICE's law enforcement requirements.
- 6.2. In order to receive LEAP, criminal investigators in non-case- or non-operation-specific assignments (e.g., criminal investigators assigned to Headquarters) are mandated to be available to perform unscheduled duty in order to meet the LEAP certification requirements.
- 6.3. Management officials will place a criminal investigator in availability status during specifically designated hours to meet local case- or operation-specific law enforcement needs. Time as a duty agent in excess of the regular daily tour will not be credited as case- or operation-specific availability hours unless appropriate management officials designate specific hours when the duty agent's personal movements are so narrowly confined that the agent cannot enjoy normal off-duty activities because he or she has been directed to be

available during those particular hours to perform work essential to ICE's law enforcement mission.

- 6.4. In exceptional circumstances, as determined by local case- or operation-specific needs, a criminal investigator may place himself or herself in availability status for certain specific periods of unscheduled duty, subject to after-the-fact approval by management. Unscheduled duty on non-workdays must be hours actually worked.
- 6.5. A criminal investigator who is assigned to protective duties of the U.S. Secret Service (USSS) may receive, in compliance with the Federal Employees Pay Act (FEPA), overtime pay for regularly scheduled overtime hours in excess of 8 hours on a day which is part of the basic 40-hour workweek, as long as 2 or more consecutive hours of unscheduled duty are performed on that same day. This exception to the LEAP requirement for scheduled overtime work is applicable only as long as a criminal investigator is performing protective duties under USSS jurisdiction. The normal first 2-hour LEAP requirement for days of the basic 40-hour workweek will apply upon return to regular ICE duties.

7. RESPONSIBILITIES.

- 7.1 The Directors of Program Offices that employ criminal investigators are responsible for the oversight of LEAP certifications and payments in compliance with the provisions of this Directive. This oversight includes the review and analysis of:
 - 1) LEAP determinations;
 - 2) Initial and annual certifications;
 - 3) The effectiveness of local management of this compensation program; and
 - 4) Reporting activities which may be required or deemed appropriate.
- 7.2. Supervisors in each Program Office at Headquarters and in the field are accountable for the implementation and the local operation of this compensation program for criminal investigators in their areas of responsibility. They may delegate all or portions of this responsibility to lower levels of supervision under their direction. Unless the payment of LEAP has been voluntarily or involuntarily suspended and an employee is decertified, management shall ensure that each criminal investigator on their staff is approved and is performing a sufficient amount of unscheduled overtime duty in order to meet:
 - 1) The needs of ICE;
 - 2) The initial and annual certification requirements in Section 8.1; and
 - 3) The substantial unscheduled duty hours requirement in Section 8.2 (See Q&A #9 in the Attachment).

7.3. Criminal investigators receiving LEAP are accountable for:

- 1) Performing substantial amounts of unscheduled overtime duty, whether officially assigned or self-initiated, to meet the law enforcement needs of ICE;
- 2) Being accessible during those designated hours when management has directed them to be available to meet ICE law enforcement requirements;
- 3) Recognizing, based on local case- or operation-specific needs, when to place themselves in availability status for specific periods of unscheduled duty, subject to after-the-fact approval by management; and
- 4) Complying with initial and minimum annual certification requirements.

8. PROCEDURES.

8.1. Initial Certification and Annual Recertification Requirements:

- 1) Each criminal investigator receiving LEAP and the appropriate supervisory officer shall make an initial certification to their Program Office Director for subsequent submission to the Assistant Secretary of ICE as prescribed by law and federal regulations attesting that the investigator is expected to meet the substantial hours requirement during the upcoming 1-year period. This is a prerequisite to receiving LEAP and there are no provisions for a waiver of this requirement.
- 2) By January 30th of each year, recertification will be made by a criminal investigator and his or her supervisory officer covering the previous January 1 through December 31 certification period to their Program Office Director for subsequent submission to the Assistant Secretary of ICE as prescribed by law and federal regulations. The recertification programs will be maintained in the appropriate Program Office case management system. These annual certifications must be electronically signed by both the criminal investigator and his or her supervisor or reflect a comparable signature designation, such as a supervisor witnessing a criminal investigator's signature and then electronically verifying that signature.
- 3) A criminal investigator who is suspended from LEAP, under the involuntary procedures in Section 8.5 (1), (2), or (3), or requests voluntary suspension under Section 8.6, must be recertified, when appropriate, and a personnel action initiated before the payment of LEAP may resume.

8.2. Substantial Unscheduled Duty Hours Requirement:

- 1) To qualify for LEAP a criminal investigator must perform an annual average of 2 hours or more of unscheduled duty per regular workday. This average of 2 hours per regular workday is a minimum annual requirement, not a maximum, and does not preclude additional unscheduled duty to meet the needs of ICE.

- 2) To the maximum extent feasible and consistent with ICE's law enforcement requirements, a substantial number of the hours needed to meet the minimum annual average of 2 hours or more per regular workday will be unscheduled duty hours actually worked.
- 3) The minimum annual average requirement is computed by dividing the total number of unscheduled duty hours (both overtime hours worked and designated and approved availability hours) for the certification period January 1 through December 31 by the number of regular workdays (as defined in Section 5.7) in the certification period.
- 4) The total number of unscheduled duty hours credited toward the minimum annual average requirement include:
 - a) Unscheduled duty hours actually worked before the beginning or after the end of the workdays in the basic 40-hour workweek;
 - b) Unscheduled duty hours actually worked on a scheduled day off;
 - c) Management-directed case- or operation-specific availability hours before the beginning or after the end of the workdays in the basic 40-hour workweek;
 - d) Case- or operation-specific hours when criminal investigators place themselves in availability status, subject to after-the-fact approval by management; and
 - e) Time spent traveling outside the duty station or temporary work location during non-duty hours which meets the compensable overtime criteria in 5 U.S.C. § 5542(b)(2)(B) and 5 CFR 550.112(g) (see Question and Answer # 6 in Attachment 1).
- 5) Hours which are not credited toward the minimum annual average requirement (defined in Section 8.2(1)) include:
 - a) Unscheduled hours which are not case- or operation-specific and/or are not directed by ICE management;
 - b) Unscheduled hours which are not approved after the fact, based on local case- or operation-specific needs;
 - c) Unscheduled hours on a non-workday which do not involve the actual performance of work;
 - d) Time spent commuting from home to a criminal investigator's duty station on a regular workday and vice versa via a government-owned vehicle (GOV) or privately-owned vehicle (POV);

- e) Travel time outside the duty station or temporary work location during non-duty hours which does not meet the compensable overtime criteria in 5 U.S.C. § 5542 (b)(2)(B) and 5 CFR 550.112(g); and
- f) Time spent in training which is covered by the premium pay prohibition of 5 CFR 410.402.

8.3. Meeting the unscheduled duty minimum annual average requirement for LEAP certification shall not be interpreted as precluding additional unscheduled duty hours actually worked which may be required to meet the needs of ICE.

8.4. ICE Program Offices will track unscheduled duty hours for annual average and certification purposes using their respective case management systems.

8.5. Recording unscheduled duty hours for annual average and certification purposes for criminal investigators using TECS-II:

- 1) TECS Case Management has two data columns which enable management and criminal investigators to track and evaluate the progress of unscheduled duty toward a criminal investigator's annual average requirement of 2 hours or more per regular workday during the January 1 to December 31 certification period. Data in the column identified as TARGET LEAP serves as a guide for assessing unscheduled duty for a 30-day period. Data in the column identified as OFFICER LEAP will display the total unscheduled duty hours during the calendar year to date (see Attachment 1 Question and Answer #9). Both of these columns should be consistently reviewed during a certification period to:
 - a) Ensure that sufficient unscheduled duty is being performed or approved to enable criminal investigators to meet the minimum annual average requirement; and
 - b) Identify a potential shortfall in the minimum number of required unscheduled duty hours which could result in criminal investigators failing to meet the minimum annual average requirement and therefore being decertified and suspended from receiving LEAP.

Note: Criminal investigators are reminded that the word "TARGET" is not to be interpreted as the maximum number of unscheduled duty hours they are expected to be available to work. Rather, it indicates the minimum number of such hours that they would be expected to work if all the workdays in any given calendar month were regular workdays worked by them. (See Question and Answer #9 in the Attachment.)

- 2) Unscheduled duty is recorded in TECS Case Management in either of two columns labeled "UOT" (unscheduled overtime) and "DAH" (designated availability hours, see section 5.3). Both sets of hours will be credited in computing the minimum annual average requirement for the January 1 through December 31 certification period. The sum of the hours recorded in both columns will equal the total number of hours of unscheduled duty actually performed.

- a) Unscheduled overtime duty hours worked by criminal investigators will be recorded in TECS Case Management using the column identified as UOT.
- b) A criminal investigator's case- or operation-specific availability hours that were management directed or subsequently approved during days of the basic 40-hour workweek will be recorded in TECS Case Management using the column identified as DAH.

8.6. Involuntary Suspension of LEAP:

- 1) If, towards the end of a certification period or at any time between certifications, management determines that a criminal investigator will not meet the minimum annual average requirement of 2 hours of unscheduled duty (as defined in Section 5.8) per regular workday, (as defined in Section 5.7) management may initiate action to suspend LEAP and decertify the criminal investigator. The capabilities of the respective case management systems will enable management officials to monitor the progress of performed unscheduled duty during certification periods and, whenever feasible, take measures which could avoid suspension and decertification.
- 2) If corrective measures are not successful or feasible and failure to meet the minimum annual average requirement is inadvertent, action should be taken to decertify the criminal investigator and suspend LEAP for a period compatible with the shortfall period of unscheduled duty.

Note: A request for personnel action must be initiated to stop payments during the suspension.

- 3) ICE may also deny or cancel a certification based on a finding that a criminal investigator has failed to perform unscheduled duty (assigned or reported overtime work or designated availability hours) or that a criminal investigator is unable to perform unscheduled duty for an extended period of time due to physical or health reasons. In these situations, LEAP will be suspended for a period appropriate to the particular circumstances, generally until a criminal investigator is able or willing to meet the unscheduled duty requirement.
- 4) An involuntary suspension of LEAP constitutes a loss of pay under the provisions of 5 U.S.C. § 7512 and must be carried out in accordance with other ICE policies and procedures governing adverse actions. ICE Program Offices must follow adverse action procedures when proceeding to terminate LEAP (e.g., for disciplinary reasons). Guidance on adverse actions is available from the Office of Human Capital, Employee and Labor Relations.
- 5) At the end of an involuntary LEAP suspension per Section 8.5 (1), (2), or (3), a criminal investigator must be recertified and a personnel action initiated to resume LEAP payments.

8.7. Request for Voluntary Suspension of LEAP:

- 1) Subject to the law enforcement needs of ICE, a criminal investigator may make a written request for voluntary relief from the minimum unscheduled duty hours requirement and for a suspension of LEAP because of personal or family hardships, part-time status, or other circumstances which preclude meeting ICE's need for substantial amounts of unscheduled duty. Managers and supervisors will consider such requests for relief for a specified period of time on a case-by-case basis. Denial of requests may be appealed to the Director of the appropriate Program Office.
- 2) A request for relief from the unscheduled duty hours requirement and concurrent suspension of LEAP must be for a specified period of time and must also contain a written statement in which the criminal investigator acknowledges that approval of the request will result in a voluntary suspension of LEAP and will not be subject to ICE adverse action procedures.

Note: If a request for voluntary suspension is approved, a personnel action must be initiated to stop LEAP payments.

- 3) Subject to the needs of ICE, a criminal investigator may request in writing to extend a previously-approved period of relief from the minimum unscheduled duty hours requirement and voluntary suspension of LEAP. Managers and supervisors will consider such requests for an extension on a case-by-case basis. Denial of such requests may be appealed to the Director of the appropriate Program Office.
- 4) Part-Time Status. A temporary assignment to part-time status will require a voluntary suspension of LEAP and is subject to the limitations in the existing ICE guidance on part-time employment. The employee must complete the Law Enforcement Availability Pay Waiver (see Attachment 2).
- 5) If a request for voluntary relief from the unscheduled duty hours requirement and suspension of LEAP is disapproved, a criminal investigator will be required to continue to perform the full range of the duties of his or her position. A criminal investigator may continue to receive LEAP during periods of approved paid leave.
- 6) At the end of an approved period of voluntary relief from the minimum unscheduled duty hours requirement and suspension of LEAP, a criminal investigator must be recertified and a personnel action must be initiated to resume payments.

8.8. Payment of LEAP:

- 1) A criminal investigator will be paid LEAP equal to 25 percent of his or her rate of basic pay, as the latter is defined in 5 CFR 550.103. Receipt of LEAP is appropriate only for periods during which a criminal investigator is receiving basic pay.
- 2) LEAP will continue during periods of:

- a) Excused paid absences, such as holidays and annual, sick, administrative, military, funeral, or court leave;
- b) Officially-approved training; and
- c) Officially-approved travel, such as travel for relocation purposes.

While LEAP will continue during such periods, days falling into one of the above categories are generally excluded from the regular workday as defined in Section 5.7.

- 3) Receipt of LEAP is subject to the biweekly premium pay limitation prescribed by 5 U.S.C. § 5547(c) and any annual overtime limitation prescribed by the annual Appropriations Act.
- 4) LEAP will not be paid to a criminal investigator in part-time status, since LEAP is premium pay for unscheduled duty in excess of a 40-hour workweek. (See Section 8.6 (4).)

8.9. Relation of LEAP to Other Pay:

- 1) A criminal investigator receiving LEAP is also entitled to receive, when appropriate and officially-ordered or approved:
 - a) Regularly scheduled overtime pay under 5 U.S.C. § 5542(a) (Note: The first 2 hours of overtime on days of the basic 40-hour workweek are always LEAP hours only.);
 - b) Regularly scheduled night premium pay under 5 U.S.C. § 5545(a);
 - c) Regularly scheduled Sunday premium pay under 5 U.S.C. § 5546(a) for scheduled non-overtime work on Sundays; and
 - d) Holiday premium pay under 5 U.S.C. § 5546(d) for ordered or approved non-overtime work on a holiday which corresponds to the hours of the regular tour of duty.
- 2) Criminal investigators receiving LEAP are not entitled to receive:
 - a) Overtime pay under the Fair Labor Standards Act (FLSA);
 - b) Regularly scheduled standby duty pay under 5 U.S.C. § 5545(c)(1);
 - c) Administratively Uncontrollable Overtime (AUO) pay under 5 U.S.C. § 5545(c)(2);
 - d) Compensatory time off in lieu of pay for irregular or occasional overtime work under 5 U.S.C. § 5543; or

- c) Hazardous duty pay under 5 U.S.C. § 5545(d) for unscheduled duty hours credited to LEAP.
- 3) LEAP will be treated as basic pay for:
 - a) Advances in pay under 5 U.S.C. § 5524(a);
 - b) Severance pay under 5 U.S.C. § 5595(e);
 - c) Workers' compensation under 5 U.S.C. § 8114(e);
 - d) Retirement benefits under 5 U.S.C. § 8331(3) and 5 U.S.C. § 8401(4);
 - e) Thrift savings plan under 5 U.S.C. §§ 8431-8440f; and
 - f) Life insurance under 5 U.S.C. § 8704(c).
- 4) LEAP will not be treated as basic pay in calculating the cost-of-living allowances or other allowances and differentials or in calculating retirement benefits under 5 U.S.C. § 8331(3) and 5 U.S.C. § 8401(4) for non-foreign areas outside the 50 States and the District of Columbia, e.g., the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

9. **ATTACHMENTS.**

- 9.1. Attachment 1. "Selected Questions and Answers."
- 9.2. Attachment 2. Law Enforcement Availability Pay Waiver.

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

SELECTED QUESTIONS AND ANSWERS

1. Question: Who is entitled to receive LEAP within U.S. Immigration and Customs Enforcement (ICE)?

Answer: Only ICE criminal investigators in the GS-1811 series may receive LEAP. ICE positions classified in other occupational series are not entitled to receive LEAP.

2. Question: May a criminal investigator refuse to participate in unscheduled duty that qualifies for receipt of LEAP?

Answer: No. Unscheduled duty is a requirement for criminal investigator positions. If a criminal investigator refuses to meet the unscheduled duty requirements of his or her position, he or she may be decertified from receipt of LEAP and payments suspended. In addition, disciplinary action may be taken for such a refusal. The provisions of law (5 U.S.C. § 5545a) and federal regulations (5 CFR 550, Part 550, Subpart A) governing LEAP are applicable to ICE criminal investigators. However, as described in Section 8.6 (4) of the ICE LEAP Directive, a criminal investigator may opt out of unscheduled duty via a temporary transfer to a part-time position (5 CFR 550.182(f)).

3. Question: Does a less than full-time criminal investigator qualify to receive LEAP?

Answer: No. Only a criminal investigator working a full-time schedule has the capability to meet the substantial unscheduled duty hours requirement necessary to qualify for LEAP.

4. Question: Does receipt of LEAP change the criteria for receiving regularly scheduled Federal Employees Pay Act (FEPA) overtime? Note: Congress enacted the Federal Employees Pay Act of 1945 to address the compensation of federal employees in the post-war environment. It provides that overtime work must be ordered and approved.

Answer: Yes. Regularly scheduled FEPA overtime work still remains specific overtime work (specific days and specific hours of those days, as well as specific employees who are assigned to perform the work) that is officially scheduled in advance of Sunday of the 7-day administrative workweek. However, the LEAP legislation and related federal regulations have altered certain scheduled FEPA entitlement criteria for criminal investigators. The following 3-phase answer provides guidance on these changes.

First, for all full-time employees, on days that are part of the basic 40-hour workweek, the first 2 hours of overtime work, regardless of when approved or scheduled, are compensated with LEAP rather than regularly-scheduled FEPA overtime. Thus, "scheduled FEPA criteria" means overtime work that has been regularly scheduled, prior to the administrative workweek, in excess of 10 hours on these workdays. This does not mean that all hours in excess of 10 hours on these days will be compensated with paid FEPA, since there may be requirements for

unscheduled duty over 10 hours on these days. Only overtime hours in excess of 10 hours on days of the basic 40-hour workweek that meet the scheduled FEPA criteria are eligible for regularly scheduled overtime pay.

Second, when a criminal investigator is assigned to protective duties under the authority of the U.S. Secret Service, such as protective duties during election campaigns, the scheduled FEPA criteria on days of the basic 40-hour workweek are overtime hours regularly scheduled in excess of 8 hours in a day, as long as 2 or more consecutive hours of unscheduled duty have also been performed on the same day. If 2 hours of unscheduled duty have not been performed on these workdays, the 10-hours-in-a-day LEAP criteria for scheduled FEPA applies. It should be noted that the 8-hours-in-a-day scheduled FEPA criterion only applies when the criminal investigator is assigned to protective duties under the authority of the U.S. Secret Service.

Third, on non-workdays, such as scheduled days off, the paid FEPA criterion is overtime hours regularly scheduled prior to the administrative workweek.

5. Question: Does LEAP continue during periods of official travel?

Answer: Yes. LEAP payment continues during periods of official travel, as well as during all forms of approved leave, including holidays and annual, sick, administrative, military, funeral, or court leave.

6. Question: Since LEAP continues during periods of official travel, does this mean that all travel outside the duty station during non-duty hours qualifies as unscheduled duty when computing the annual average for certification?

Answer: No. While LEAP will continue during official travel, not all travel time during non-duty hours will qualify as unscheduled overtime duty to be credited when computing the annual average for certification. The LEAP legislation did not amend the following compensable hours of employment criteria in 5 U.S.C. § 5542 (b)(2)(B):

(i) travel which involves the actual performance of work while traveling (work which may be performed only in a travel status, such as official responsibility for evidence, materials, suspects while traveling, or protecting individuals while traveling);

(ii) travel that is incident to travel that involves the performance of work, such as deadhead travel to or from travel where work was performed;

(iii) travel carried out under arduous conditions (i.e., conditions imposed by unusually adverse terrain, severe weather conditions (while traveling, not waiting), or in remote sites inaccessible by ordinary means of travel); and,

(iv) travel to and from an event which could not be scheduled and controlled administratively (the scheduling and control of the event must originate outside the authority of the U.S. Government, which means outside any agency of the Executive Branch of the Federal Government, not just outside ICE authority).

As a result, if travel outside the duty station during non-duty hours meets one of the compensable overtime criteria listed above, it may be counted as unscheduled duty and included in the annual average computation. (Note: Criminal investigators cannot receive LEAP and compensatory time off for travel for the same hour of travel.)

7. Question: What is deadhead travel?

Answer: Deadhead travel describes travel during which no actual work is performed but precedes or is subsequent to another travel which does involve work. For example, Special Agent (SA) Susan Jones has been directed to travel from San Francisco to New York to bring evidence to the Office of the Special Agent in Charge in New York. SA Jones' return trip from New York to San Francisco is referred to as "deadhead travel." During the trip from San Francisco to New York, SA Jones was actually working in that she had official responsibility for the evidence. During the return trip, no work was performed; nevertheless, the trip was necessary so that SA Jones could return to her post of duty.

8. Question: While on a duty agent roster, do all hours in excess of 8 hours on days of the basic 40-hour workweek count as "availability hours"?

Answer: There is no automatic entitlement to availability hours simply because a criminal investigator's name is placed on a duty agent roster and he or she might have to respond to duty calls or take appropriate action, unless management has directed the duty agent to be available during a specified period in anticipation of an identifiable or immediate need to perform unscheduled law enforcement duties.

EXAMPLE 1:

You are the duty agent on a regular workday. During business hours, a U.S. Coast Guard officer calls your supervisor and informs him or her that a patrol boat will be conducting a random vessel boarding in the bay between 7:00 PM and 11:00 PM that night. Your supervisor provides your cell phone number to the officer so that he can call you direct if they interdict contraband or aliens. You keep your cell phone close by; however, the evening passes without a call.

Question: Are the hours between 7:00 PM and 11:00 PM creditable as availability hours?

Answer: No. The fact that you might receive a call for service and would have to subsequently respond does not constitute an anticipated, identifiable, and immediate need to perform law enforcement duties.

EXAMPLE 2:

You are the duty agent on a regular workday. During business hours, a U.S. Coast Guard officer calls your supervisor and informs him or her that a merchant vessel of interest may arrive at the maritime pilot area between 7:00 PM and 11:00 PM that night. If this occurs, the U.S.

Coast Guard will launch a vessel with a law enforcement team to the pilot area, embark with the pilot, and interview the crew of the merchant vessel while underway to the port. The U.S. Coast Guard requested that an ICE agent accompany the team. The U.S. Coast Guard vessel must launch as soon as possible after notification of the merchant ship arriving at the pilot area; therefore, your supervisor directs you to stand by in the vicinity of the U.S. Coast Guard station. You spend the time across the street at a coffee shop waiting for further instructions to perform law enforcement duties. At 11:00 PM, you receive word that the merchant ship will not arrive at the pilot area until midnight and will not be receiving a pilot until the next day.

Question: Are the hours between 7:00 PM and 11:00 PM creditable as availability hours?

Answer: Yes. Even though you did not actually perform work, management directed you to be available during a specific period in a specific location in order to immediately perform law enforcement duties in support of an identified mission that was anticipated to occur. In addition, your personal movements were so narrowly confined that you could not enjoy normal off-duty activity.

9. Question: What is the "substantial unscheduled duty hours" requirement for receiving LEAP?

Answer: To qualify for LEAP, the law (5 U.S.C. § 5545a(d)(2)) and federal regulations (5 CFR 550.183 (a)) require that a criminal investigator perform an annual average of 2 hours or more of unscheduled duty per regular workday. This average of 2 hours per regular workday is a minimum and not a maximum annual requirement, and does not preclude additional unscheduled duty to meet the needs of ICE. The annual average is computed by dividing the total unscheduled duty hours (numerator) by the number of regular workdays (denominator) served during the period.

EXAMPLE for ICE criminal investigators using TECS Case Management:

Month X has 20 workdays (160 hours). During month X, SA Smith used 5 days (40 hours) of annual leave during the workweek, traveled for 2 days (16 hours) to and from an 8-day (64 hours) training session, enjoyed a 1-day (8-hour) holiday, and then worked the remaining 4 days (32 hours) of month X. As a result, only the 4 days worked (32 hours) qualify as "regular workdays" according to Section 5.7. In order to qualify for LEAP, SA Smith was required to be available to actually perform or be available to perform a minimum of 2 hours of unscheduled overtime duty for each of the 4 (32 hours) regular workdays totaling a minimum of 8 hours.

The following month, SA Smith was required to account for his case hours during month X in TECS Case Management. Case Management will automatically generate "40" as the target number of LEAP hours to be worked in month X (See Note below). The "40" assumes that all 20 workdays in month X are regular workdays as defined in Section 5.7. However, according to the same definition, SA Smith can count only 4 days as regular workdays and his true minimum target number of LEAP hours is 8 and not 40. On 3 of the regular 4 workdays, SA Smith worked 5 hours beyond the 8 hours of his regular workday and, on the fourth day, he worked 2 hours beyond the 8 hours of his regular workday. When inputting hours into Case Management, SA Smith must therefore add the 5 hours to the 8 on each of the 3 days mentioned above, and he

must add the 2 hours to the 8 on the fourth day, for a total of 17 ($5+5+5+2=17$) LEAP hours. SA Smith will enter 17 in the column labeled "UOT" and still qualify for LEAP per Section 8.2, Subsection 1.

Note: TECS Case Management will automatically generate 40 as the target number of LEAP hours to be worked in January of any given year; 80 hours for February; 120 for March; and so on, adding 40 hours for each month until December when the target number will be 480. As illustrated above, however, the target number of LEAP hours will vary from criminal investigator to criminal investigator, depending on the number of "regular workdays" (as defined in Section 5.7 of this Directive) each has worked in a year.

Law Enforcement Availability Pay Waiver

I, _____, understand that my voluntary request for suspension of Law Enforcement Availability Pay (LEAP) precludes my receiving LEAP while I maintain a part-time work schedule.

I acknowledge that my benefits will be affected as described below while I am on a part-time work schedule.

- 1) I have been advised to contact the Retirement and Employee Support Office to obtain information concerning my benefits.
- 2) My contributions to the Thrift Savings Plan follow the same rules as for full-time employees.
- 3) My contributions to Social Security and the Civil Service Retirement System and Federal Employees Retirement System funds are unaffected. Specifically, the same percentage is deducted from a part-time employee's gross earnings as from that of a full-time employee.
- 4) Each year of part-time service counts as 1 full year towards the length of service requirement, but is *prorated* for purposes of the annuity computation. This can adversely affect the amount of my retirement income.
- 5) I am eligible to continue to participate in the Federal Employees Health Benefits Program on a prorated cost basis. Because the cost of health plans varies, there is a set maximum for the U.S. Government contribution. The U.S. Government's contribution to insurance premiums is prorated based on the number of hours scheduled to work each pay period. Part-time employees pay the combined total of the regular full-time employee premiums, plus that part of the U.S. Government's share remaining after the prorated deduction.
- 6) I am eligible to continue my enrollment in the Federal Employees Group Life Insurance at a reduced rate. The amount of life insurance is reduced in proportion to the reduction in full-time salary. The cost per thousand dollars of basic life insurance per pay period remains the same.
- 7) I will accrue annual and sick leave on a prorated basis in accordance with the amount of time I have worked for the Federal Government. Annual Leave (AL) will be earned as follows:
Up to but less than 3 years of service - 1 hour of AL for every 20 hours in a pay status; 3 years but less than 15 years of service - 1 hour of AL for every 13 hours in a pay status; and 15 years or more of service - 1 hour of AL for every 10 hours in a pay status. Sick Leave (SL) will be earned at the rate of 1 hour for every 20 hours in a pay status.

- 8) The waiting period for within grade increases and promotions for part-time employees is the same as for full-time employees.
- 9) I will be paid on an hourly basis calculated at the rate for my grade and step and will continue to receive the applicable locality pay rate.
- 10) I am eligible to receive awards.

I also understand that, upon resumption of a full-time work schedule, I will have to be recertified in order for LEAP payments to be resumed.

Signed: _____
(Employee)

Date: _____

Signed: _____
(Supervisor)

Date: _____