

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System**

OFFICE OF PRIMARY INTEREST: OFFICE OF HUMAN CAPITAL

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DIRECTIVE TITLE: Retention Allowances

- 1. PURPOSE and SCOPE.** This Directive establishes policy regarding payment of retention allowances to current U.S. Immigration and Customs Enforcement (ICE) employees if the unusually high or unique qualifications of the employee or a special need of ICE for the employee's services makes it essential to retain the employee, and ICE determines that the employee would be likely to leave the Federal service without the allowance. This Directive applies to all components of ICE. Covered employees are described under Section 6.2. Excluded employees are described under Section 6.3.

- 2. AUTHORITIES/REFERENCES.**
 - 2.1.** 5 U.S.C. Section 2302(d), Prohibited personnel practices
 - 2.2.** 5 U.S.C. Section 5754, Retention allowances
 - 2.3.** 5 CFR Part 575 Subpart C, Retention incentives
 - 2.4.** DHS MD 3170.1, Recruitment and Retention Incentives, March 31, 2004

- 3. SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive is the originating and establishing directive for ICE policy on retention allowances.

- 4. BACKGROUND.** Under the direction of the Assistant Secretary, ICE is charged with enforcing immigration and customs laws, collecting intelligence, protecting specified Federal buildings, and any other functions as the Secretary of Homeland Security may direct. It is critical that ICE employ a highly qualified workforce to perform the work required to accomplish this mission. It is also critical that ICE retain a highly qualified workforce to maintain focus and continuity in fulfilling its responsibilities. Under Federal regulations, ICE may pay a retention allowance to a current ICE employee if the unusually high or unique qualifications of the employee or a special need of ICE for the employee's services makes it essential to

retain the employee, and ICE determines that the employee would be likely to leave the Federal service without the allowance.

5. Definitions.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any kind. For example, a rate of basic pay includes a special salary rate under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, but does not include locality payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509).

6. Policy.

6.1. The Assistant Secretary hereby delegates authority to ICE Program Offices to establish retention plans in accordance with the guidance in this Directive. Each Program Office shall establish a retention plan appropriate to its mission, functions, and staffing requirements.

6.2. Coverage. Employees in the following types of positions are eligible for a retention allowance:

- 1) A General Schedule (GS) position paid under 5 U.S.C. 5332;
- 2) A senior-level or scientific or professional (SL/ST) position paid under 5 U.S.C. 5376;
- 3) A Senior Executive Service (SES) position paid under 5 U.S.C. 5383;
- 4) A position as a law enforcement officer, as defined in 5 CFR 550.103;
- 5) A position under the Executive Schedule established under 5 U.S.C. Chapter 53, Subchapter II, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;
- 6) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); and
- 7) Any other category of position in ICE not otherwise covered for which the Office of Personnel Management (OPM) has authorized payment under 5 CFR 575.303(g).

6.3. Exclusions. ICE may not pay a retention allowance to an employee in--

- 1) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

- 2) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. Section 3132 (a)(7));
- 3) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or
- 4) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—
 - a) To which an individual is appointed by the President without the advice and consent of the Senate;
 - b) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or
 - c) In which the employee is expected to receive an appointment as the head of an agency.

6.4. Criteria for Payment.

- 1) In determining whether a retention allowance should be paid and in determining the amount of the payment, the Program Office must consider the following factors, as applicable in the case at hand:
 - a) The success of recent efforts to recruit candidates and retain employees with qualifications similar to those possessed by the employee for positions similar to the position held by the employee; and
 - b) The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee.
- 2) The employing office may also consider other factors in determining whether to authorize a retention allowance and the amount of any such payment, such as—
 - a) The severity of the retention problem;
 - b) Salary levels reported in published salary surveys for comparable non-Federal positions in the local geographic area;
 - c) Salary documented in a competing job offer;
 - d) The projected cost of recruitment or training efforts if the employee leaves the position; and
 - e) Availability of funds.

6.5. Group Retention Allowances.

- 1) ICE may pay a retention allowance of up to 10 percent of basic pay to a group or category of employees if—
 - a) The unusually high or unique qualifications of the employees or a special need of the agency for the employees' services makes it essential to retain the employees in the group, and
 - b) It is reasonable to presume that there is a high risk that a significant number of employees in the targeted group would be likely to leave the Federal service for any reason in the absence of an allowance.
- 2) ICE may pay group-based retention allowances to current GS, prevailing rate (wage), or another type of employee for which such payments have been approved by OPM. The group retention allowance authority shall not be used for groups of employees in SL/ST, SES, Executive Schedule, Presidential appointee, or similar positions.

6.6. Additional Payment Conditions. A Program Office may not offer or authorize a retention allowance—

- 1) For an employee fulfilling a previously established recruitment or relocation bonus service agreement (Note: If a retention allowance is authorized first, a relocation bonus may be authorized without affecting the payment of a retention allowance.).
- 2) For an employee likely to leave his or her position for other Federal employment of any kind in any branch of the Federal Government.
- 3) Prior to an individual's employment with the employing office.
- 4) For an employee if or to the extent that such an allowance, when added to the employee's estimated aggregate compensation, as defined in 5 CFR 530.202, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for Level I of the Executive Schedule.

7. Responsibilities.

- 7.1. **The ICE Assistant Secretary is responsible for the overall implementation of this retention allowance Directive. The Assistant Secretary serves as Approval Authority on recommendations for retention allowances. The Assistant Secretary may delegate this authority to a Deputy Assistant Secretary, the Chief of Staff, or to Program Office Directors.**

7.2. ICE Program Office Directors

- 1) Develop retention payment plans appropriate to their mission, functions and staffing requirements.
- 2) Develop appropriate written documentation justifying the payment of retention allowances and the amount of the allowance in accordance with the criteria in this Directive.
- 3) Review and recommend approval or denial of requests for payment of individual retention allowances. If delegated by the Assistant Secretary, may make final approval or denial of requests for payment of individual retention allowances.
- 4) Unless delegated final authority, forward recommendations, including a certification of the availability of funds, and obtain approval from the Approval Authority prior to authorizing payment of retention allowances.
- 5) Reduce or terminate retention allowances as required by this plan.
- 6) Review each retention allowance authorization at least annually to ensure payment is warranted and certify this determination in writing.
- 7) Maintain a record of each written determination required by this plan and make such records available for review upon request by DHS and OPM.
- 8) Submit a report, through the Director, Office of Human Capital, to the Secretary of DHS, or designee, of each retention allowance determination for submission to OPM's Central Personnel Data File.
- 9) Choose, on a case-by-case basis, when to submit an employee for a retention allowance under this program.

7.3. Principal Headquarters Officers (PHOs) and Field Office Directors (FODs) determine the need to offer individual or group retention allowances and coordinate with their Program Office Management Support division and/or the Director, Office of Human Capital to obtain data and prepare requests for payment of retention allowances.

7.4. The Director, Office of Human Capital (OHC) coordinates with Program Offices to ensure they comply with merit system principles when authorizing retention allowances and consider the need to maintain a balanced and diverse workforce; conducts research on recruiting and salary trends and provides advice to Program Office Directors; obtains records of retention allowance transactions; and transmits reports to the Office of the Assistant Secretary on retention allowances for release to DHS and OPM.

7.5. The Employee and Labor Relations Office of the OHC coordinates with Program Offices to ensure that they fulfill their responsibilities under labor relations statutes and union agreements.

7.6. The Chief Financial Officer provides advice and assistance to Program Office budget officials to facilitate financial planning for and implementation of the retention allowance program.

8. Procedures.

8.1. Document Rationale for Payment.

- 1) For each retention allowance paid, the employing PHO or FOD must document in writing the factors considered in authorizing the allowance, including the amount, and the determination that, in the absence of the allowance, the office would encounter difficulty in retaining the employee(s).
- 2) For each retention allowance paid, the employing office must document in writing that the unusually high or unique qualifications of the employee or a special need of the employing office for the employee's services makes it essential to retain the employee and that, in the absence of the allowance, the employee would be likely to leave the Federal service (for any reason). The employing office manager must describe in writing the extent to which the employee's departure would affect the Program Office's ability to carry out an activity or perform a function essential to the Program Office's mission.
- 3) To support a determination that there is a high risk that a significant number of employees in the group targeted to receive retention allowances are likely to leave, the employing Program Office must gather and document evidence of –
 - a) Extreme labor market conditions;
 - b) High demand in the private sector for the knowledge and skills possessed by the employees;
 - c) Significant disparities between Federal and private sector salaries; or
 - d) Other similar conditions.

8.2. Approval.

- 1) The PHO or FOD initiates the request for payment of an individual or group retention allowance and submits it to the Headquarters Program Office Director.
- 2) If authority has been delegated to the Program Office Director, he/she may review and recommend approval or denial of the request and submit the decision to the ICE Office of Human Capital.

- 3) The Assistant Secretary, or designee, reviews and approves or denies the request.
- 4) In all instances, the employing Program Offices must submit requests for approval of a group retention allowance in excess of 10 percent, up to 25 percent, of basic pay, through the ICE Office of Human Capital and the Office of the Assistant Secretary, to the Office of the Secretary of DHS, for submission to OPM for approval. Such requests shall include—
 - a) A description of the group and the number of employees to be covered by the proposed retention allowance;
 - b) A written determination that the group of employees meets the conditions for payment;
 - c) The proposed percentage retention allowance payment and a justification for that percentage;
 - d) The expected duration of retention allowance payments;
 - e) Information on contact made with other affected agencies in the geographic area concerned; and
 - f) Any other information pertinent to the case at hand.

8.3. Payment.

- 1) A retention allowance must be calculated as a percentage of the employee's rate of basic pay (excluding locality pay), not to exceed 25 percent. A retention allowance is paid at the same time as basic pay, i.e., the allowance must be paid at an hourly rate for each hour during which the employee receives basic pay.
- 2) Retention allowances are not considered part of an employee's rate of basic pay for any purpose and are not included in an employee's lump-sum annual leave payment under 5 U.S.C. 5551. Retention allowances are in addition to basic pay and are subject to Federal income tax, FICA and Medicare withholding, and any State or local income tax withholdings that may be applicable. Tax withholdings will be deducted at the time payment is made.

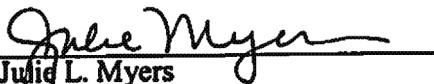
8.4. Reducing or Terminating Retention Allowances. Employing offices must:

- 1) Reduce or terminate retention allowances to ensure that an employee's estimated aggregate compensation, as described in 5 CFR 530.202, does not exceed the rate for level I of the Executive Schedule.
- 2) Reduce or terminate retention allowances when the conditions giving rise to the original determination to pay the allowance change (e.g., a lesser amount would be sufficient to retain the employee, labor-market factors make it more likely to recruit a candidate with qualifications similar to those possessed by the employee, the office's need for the employee's services has been reduced to a level that makes it unnecessary to continue payment).

- 3) Employing offices may reduce or terminate retention allowances when budgetary considerations make it difficult to continue payment at the level originally approved (or at all).
- 4) Employees may not appeal the reduction or termination of a retention allowance. However, this should not be construed to extinguish or lessen any right or remedy under 5 U.S.C. Chapter 12, Subchapter II, or any laws referred to in 5 U.S.C. 2302(d).

9. **ATTACHMENT.** None.

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 
Julie L. Myers
Assistant Secretary
U.S. Immigration and Customs Enforcement