

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number: 1053.1 Exemptions from Mandatory Separation for ICE Special Agents

Issue Date: May 16, 2017

Effective Date: May 16, 2017

Superseded: None.

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive provides policy and procedures governing requests for exemptions from mandatory separation for U.S. Immigration and Customs Enforcement (ICE) Special Agents in the General Schedule (GS)-1811 series at or below the GS-13 grade level in primary, rigorous, and secondary positions, as well as instructions for submitting such requests for approval.
2. **Policy.** It is the policy of ICE to comply with laws and regulations with regard to exemptions from mandatory separation for Special Agents at or below the GS-13 grade level. It is also the policy of ICE to carefully evaluate and submit for approval all requests for exemptions from mandatory separation only when it is determined that it would be in the public interest to do so and based on true ICE mission needs to address operational challenges that would result from losing a specific, unique expertise. ICE will also consider requests for exemptions from mandatory separation of Special Agents in hardship locations or in locations which are remote or have historically been hard to fill. No exemption or request for exemption may be sought solely on the desire of an individual employee to remain employed.
3. **Definitions.**
 - 3.1. **Mandatory separation date:** The date, as determined by age and length of service at which a law enforcement officer must be separated from Federal service, as prescribed in the retirement statutes in Title 5, United States Code (U.S.C.), Sections 8335(b) and 8425(b). Generally, the mandatory separation age is 57, or if the employee is over the age of 57, when the employee achieves 20 years of creditable law enforcement service.
 - 3.2. **Primary position:** Primary position has the meaning given in Title 5, Code of Federal Regulations (C.F.R.), Section 831.902.
 - 3.3. **Retirement systems:** The retirement systems are the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS).
 - 3.4. **Rigorous position:** Rigorous position has the meaning given in 5 C.F.R. § 842.802.
 - 3.5. **Secondary position:** Secondary position has the meaning given in 5 C.F.R. § 831.902 for CSRS, and 5 C.F.R. § 842.802 for the FERS.

4. Responsibilities.

4.1. The **Director of ICE** is responsible for:

- 1) Tasking the Deputy Director to evaluate the necessity for retaining an ICE Special Agent beyond the mandatory separation age.
- 2) Delegating authority to the Deputy Director to review the approval or disapproval of requests for exemptions from mandatory age retirement for ICE Special Agents.
- 3) Delegating the authority to the Deputy Director to approve or deny requests for exemptions from mandatory age retirement for employees who would not serve beyond the age of 60; and
- 4) Submitting requests for exemptions from mandatory age retirement to the Department of Homeland Security (DHS) Office of the Chief Human Capital Officer (CHCO) for employees who would serve beyond the age of 60, in accordance with the instructions provided in DHS Management Directive (MD) 257-02, Revision 1, "Mandatory Separation for Law Enforcement Officers and Firefighters," dated June 14, 2016, and DHS Instruction 257-02-001, by the same title, dated June 30, 2016.

4.2. The **ICE Human Capital Officer** is responsible for:

- 1) Evaluating and recommending approval or disapproval of requests for exemptions from mandatory age retirement.
- 2) Coordinating requests for exemptions with the DHS Office of the Chief Human Capital Officer.
- 3) Providing information and guidance to the Deputy Director of ICE concerning the criteria and procedures for requesting exemptions from mandatory separation, as set forth in DHS MD 257-02, DHS Instruction 257-02-001, and this Directive.

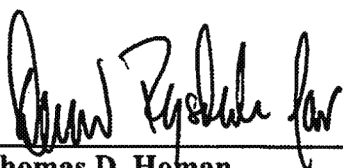
4.3. The **Executive Associate Director (EAD), Homeland Security Investigations (HSI) and the Associate Director (AD), Office of Professional Responsibility (OPR)**, are responsible for:

- 1) Evaluating and recommending approval or disapproval of requests for exemptions from mandatory age retirement submitted by HSI or OPR Special Agents, as appropriate.
- 2) Submitting such requests to the ICE Human Capital Officer, requesting that he or she review and approve the requests and forward them to the Deputy Director of ICE.

- 4.4. ADs, Deputy Assistant Directors, Special Agents in Charge, and Attachés** are responsible for:
- 1) Evaluating and recommending approval or disapproval of requests for exemptions from mandatory age retirement for Special Agents within their area of responsibility.
 - 2) Forwarding such requests, along with an appropriate justification, to the head of Mission Support in HSI or OPR, as appropriate.
- 4.5. The Heads of Mission Support in ICE Directorates and Program Offices** are responsible for:
- 1) Evaluating and recommending approval or disapproval of all requests for exemptions from mandatory age retirement for Special Agents.
 - 2) Obtaining concurrence, as needed, from the head of Domestic Operations or International Operations in their Directorate or Program Office, as appropriate.
 - 3) Forwarding the requests to the appropriate Directorate EAD or Program Office AD, with a recommendation to approve or disapprove them and to forward them to the ICE Human Capital Officer.
- 5. Procedures/Requirements.**
- 5.1.** The ICE Office of Human Capital will notify ICE Special Agents covered under CSRS or FERS of their impending mandatory separation:
- 1) No less than 60 days prior to the last day of the month in which they will become age 57; or
 - 2) No less than 60 days prior to the last day of the month in which they will have achieved 20 years of service, if over the age of 57.
- 5.2.** Action to separate the Special Agent is not effective, without the consent of the Special Agent, until the last day of the month in which the 60-day notice expires. For purposes of counting notice days when a Special Agent's birthday falls on the last day of the month, the day before the birth date is counted as the birthday.
- 5.3.** Special Agents who previously served for 20 years or more as law enforcement officers but who are no longer subject to retirement system provisions for such positions are not subject to mandatory separation.
- 5.4.** As soon as the appropriate EAD or AD determines that it is in the public interest to exempt a Special Agent in their Directorate or Program Office from mandatory separation, he or she will forward a request to the ICE Human Capital Officer.

- 5.5. All requests for exemption from mandatory separation will contain the following:
- 1) The Special Agent's name, date of birth, length of law enforcement service, and the date of mandatory retirement.
 - 2) The Special Agent's position title, rate of pay, and duty station location.
 - 3) The length of time (not to exceed one year) for the requested exemption.
 - 4) A statement of facts showing why it is in the public interest to retain the Special Agent beyond the age of mandatory separation and that it would promote the needs of ICE in fulfilling its mission. Some examples of this are: retirement in remote, hard-to-fill location or the loss of a special skill or ability.
 - 5) A statement explaining why the exemption is requested.
 - 6) A medical certificate signed by the Special Agent's personal physician showing the Special Agent's fitness for duty to remain employed as a law enforcement officer. The Special Agent's personal physician will medically certify the Special Agent for continued duty and state in the medical certificate that he or she has reviewed the Special Agent's Position Description.
 - 7) A statement signed by the Special Agent indicating his or her willingness to remain employed beyond the mandatory separation date.
- 5.6. All requests for exemption from mandatory separation must be accompanied by a recommendation for approval or disapproval by the Director of ICE and forwarded to the DHS CHCO.
- 5.7. Requests for exemption from mandatory separation for employees who would serve beyond the age of 60 must be evaluated by the DHS CHCO and must be submitted no less than 90 days prior to the employee's mandatory separation date.
- 5.9. ICE shall not delay in serving an employee notice of mandatory separation while awaiting approval of a pending request for exemption.
6. **Recordkeeping. N/A.**
7. **Authorities/References.**
- 7.2. 5 U.S.C. §§ 8335 (b) and 8425 (b).
- 7.3. 5 C.F.R., Part 831 Subparts E and I.
- 7.4. 5 C.F.R., Part 842 Subpart H.

- 7.6. DHS MD 257-02, Revision 01, Mandatory Separation for Law Enforcement Officers and Firefighter, dated June 14, 2016.
- 7.7. DHS Instruction Number: 257-02-001, Mandatory Separation for Law Enforcement Officers and Firefighters, dated June 30, 2016.
8. **Attachments.** None.
9. **No Private Right.** This Directive is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



Thomas D. Homan
Director (A)
U.S. Immigration and Customs Enforcement