

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System

OFFICE OF PRIMARY INTEREST: OFFICE OF HUMAN CAPITAL

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DIRECTIVE TITLE: Recruitment Bonuses

1. **PURPOSE and SCOPE.** This Directive establishes policy regarding recruitment bonuses. This directive applies to all components of ICE. It applies to all employees in ICE, except:
 - 1.1. Presidential appointees listed in the Homeland Security Act of 2002, and
 - 1.2. Those employed as "experts and consultants" under Title 5 United States Code (U.S.C.) section 3109 or other statutory authorities.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. 5 U.S.C. Section 5333, Minimum rate for new appointments.
 - 2.2. 5 U.S.C. 5753, Recruitment and relocation bonuses.
 - 2.3. 5 U.S.C. 5754, Retention bonuses.
 - 2.4. 5 CFR, section 531.212 Superior qualifications and special needs pay-setting authority.
 - 2.5. 5 C.F.R. Part 575, Subpart A, Recruitment Incentives.
 - 2.6. 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 **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This Directive is the originating and establishing directive for ICE policy on recruitment bonuses.
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 recruitment bonus to a newly appointed employee when ICE has determined that the employee's position is likely to be difficult to fill in the absence of an incentive.

5. Definitions.

5.1. Newly appointed means—

- 1) The first appointment, regardless of tenure, as an employee of the Federal Government, or
- 2) An appointment as an employee of the Federal Government following a break in service of at least 90 days from the candidate's last period of Federal employment. Employing offices may pay a recruitment bonus without requiring a 90-day break in service if the candidate's Federal employment during the 90-day period immediately preceding the appointment was limited to one or more of the following:
 - a) Employment under the Student Educational Employment Program under 5 CFR 213.3202;
 - b) Employment as a law clerk trainee under 5 CFR 213.3102(e);
 - c) Employment as a student during school vacations under a short-term temporary appointing authority;
 - d) Employment under a provisional appointment designated under 5 CFR 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or
 - e) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

5.2. 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, except as cited below. 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. Special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509) are included in the rate of basic pay.

5.3. Service agreement means a written agreement between the employing office and a newly appointed employee under which the employee agrees to a specified period of employment with the office in return for payment of a recruitment bonus.

6. Policy

6.1. Coverage

- 1) Employees newly appointed in the following types of positions are eligible for a recruitment bonus:
 - a) A General Schedule (GS) position paid under 5 U.S.C. 5332;
 - b) A Senior-Level or Scientific or Professional (SL/ST) position paid under 5 U.S.C. 5376;
 - c) A Senior Executive Service (SES) position paid under 5 U.S.C. 5383;
 - d) A position as a law enforcement officer, as defined in 5 CFR 550.103;
 - e) 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;
 - f) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); and
 - g) Any other category of position in ICE not otherwise covered for which the Office of Personnel Management (OPM) has authorized payment under 5 CFR 575.103(g).
- 2) A recruitment bonus may not be paid to an employee in:
 - a) A position as the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency;
 - b) A position to which an individual is appointed by the President, with or without the advice and consent of the Senate;
 - c) A position in the Senior Executive Service as a non-career appointee (as defined in 5 U.S.C. 3132(a)(7)); or
 - d) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

6.2. Criteria for Payment

- 1) In determining whether a recruitment bonus should be paid and in determining the amount of any such payment, the employing office shall consider the following factors, as applicable in the case at hand:
 - a) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
 - b) Recent turnover in similar positions;
 - c) Labor-market factors that may affect the ability of the office to recruit candidates for similar positions now or in the future;

- d) Special qualifications needed for the position; and
 - e) The practicality of using the superior qualifications pay-setting authority provided by 5 U.S.C. 5333 and 5 CFR 531.212 alone or in combination with a recruitment bonus.
- 2) The employing office may also consider other factors in determining whether to authorize a recruitment bonus and the amount of any such payment, such as—
- a) The severity of the recruiting problem;
 - b) Salary levels reported in published salary surveys for comparable non-Federal positions;
 - c) The importance and/or criticality of the position to be filled and the effect on the employing office if it is not filled or if there is a delay in filling it;
 - d) Current salary of the candidate;
 - e) Salary documented in a competing job offer;
 - f) The disparity in cost of living between the candidate's current residence and the proposed duty station;
 - g) The projected cost of further recruitment efforts if the candidate does not accept the position;
 - h) The extent of the individual's past training and experience that serves to qualify him or her for the position; and
 - i) Availability of funds.
- 3) An employing office may target groups of similar positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a case-by-case basis.

6.3. Service Agreement

- 1) The length of the service agreement shall be a minimum of one year and a maximum of four years and shall be established in whole year increments, i.e., 1, 2, 3 or 4 years. When determining the length of the service period such conditions as the following should be considered.
- a) The criticality of the position to the mission of the organization;
 - b) The amount of training required to bring the employee the level of a contributing member of the group;
 - c) The length of time required to find a candidate for the position or other similar positions in the organization; and,
 - d) Other similar factors.

An employing office will delay the starting date of a service agreement until after an employee completes an initial period of formal training or required probationary period when continued employment in the position is contingent on successful completion of the formal training or probationary period. While

the employing office must make the determination to pay a recruitment bonus before the employee enters on duty, the service agreement must specify that if the employee does not successfully complete the training or probationary period before the service period begins, then the employing office is not obligated to pay any portion of the recruitment bonus to the employee.

- 2) Before a recruitment bonus may be paid, the employee must sign a written agreement to serve a specified period of employment with ICE, regardless of the amount of the recruitment bonus authorized. Program offices may use the model service agreement in the Attachment to this plan.
- 3) The agreement may specify employment conditions considered appropriate, such as, but not limited to, the employee's position and the duties he or she is expected to perform, work schedule, duty location, or level of performance. However, the service agreement in no way constitutes a right, promise, or entitlement to continued employment or noncompetitive conversion to the competitive service, nor does it limit management's right to take corrective or disciplinary actions as otherwise appropriate.

6.4. Mandatory Termination of a Service Agreement. An approving official must terminate a service agreement if an employee:

- 1) Is demoted or separated for cause, i.e., for unacceptable performance or conduct;
- 2) Receives a rating of record or an official performance appraisal or evaluation of less than "achieved expectations" or equivalent; or,
- 3) Fails to fulfill the terms of the service agreement.

6.5. Optional Termination of a Service Agreement. An employing office may terminate a service agreement solely on the management needs of the employing office. For example, the office may terminate a service agreement when the employee's position is affected by a reduction in force, when there are insufficient funds to continue the planned bonus payments, or when the office assigns the employee to a different position that is not within the terms of the service agreement.

6.6. Required Actions when Terminating a Service Agreement. The employing office must notify an employee in writing when it terminates a recruitment bonus service agreement. Terminating a service agreement is not grievable or appealable.

6.7. Effects of Terminating a Service Agreement. Terminating a service agreement will have the following effects on the employee:

- 1) If a service agreement is terminated for one of the mandatory reasons described in paragraph Section 6.4 above, the employee will retain the recruitment bonus payments previously paid that are based on the completed portion of the service period. If the employee has received bonus payments that are less than the amount that is owed as a result of a completed portion of the service period, then the employing organization is not required to pay the employee the amount attributable to the completed service. Employing organizations will not include in the terms of the service agreement conditions that will require payment of unpaid portions of the bonus for completed service when the service agreement is terminated for one of the mandatory reasons. If the employee has received bonus payments that are more than the amount that is owed as a result of a completed portion of the service period, then the employee must repay the excess amount.
- 2) If a service agreement is terminated based on the management needs of the employing organization described in Section 6.5 above, the employee is entitled to retain all recruitment bonus payments that are attributable to completed service. If the employee has received bonus payments that are less than the amount that is owed as a result of a completed portion of the service period, then the employing organization will pay the employee the remaining unpaid amount attributable to the completed service. If the employee has received bonus payments that are more than the amount that is owed as a result of the completed portion of the service period, then the employee is entitled to retain the excess amount.

6.8. Failure to Complete a Service Agreement.

- 1) An employee who fails to complete the period of employment established under a recruitment bonus service agreement shall be indebted to the Federal Government and shall repay the recruitment bonus on a pro rata basis. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement.
- 2) Amounts owed by an employee shall be recovered from the employee under ICE's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K.
- 3) An employee shall not be indebted to the Federal Government when the employee fails to complete a period of employment established under a service agreement because he or she is involuntarily separated (as defined in 5 CFR 550.703)

6.5. Waiver of Repayment

- 1) Repayment may be wholly or partially waived at the discretion of ICE if recovery would not be in the public interest or would be against equity and good

conscience. In making this determination, ICE will take into account consistency, fairness, and the cost to the taxpayer of recovering monies owed to the Government. A waiver may be considered, but is not automatic, when an employee accepts a position in another part of DHS.

- 2) When an employee is separated by death or disability retirement, or is unable to continue working because of disability evidenced by acceptable medical documentation, repayment shall be waived automatically.

7. Responsibilities.

7.1. The ICE Assistant Secretary exercises overall authority over the ICE recruitment bonus program. Elements of this authority are delegated to the Director, Office of Human Capital, and ICE Program Office Directors as delineated in the following subsections.

7.2. The Director, Office of Human Capital:

- 1) Determines when a position or group of positions is likely to be difficult to fill;
- 2) Reviews and approves payment of a recruitment bonus for an employee or group of employees;
- 3) Establishes the criteria for determining the amount of a recruitment bonus and the length of a service agreement;
- 4) Requests a waiver from OPM of the limitation on the maximum amount of a recruitment bonus when determined necessary to meet ICE's mission needs;
- 5) Establishes the criteria for terminating a service agreement;
- 6) Complies with merit system principles when authorizing recruitment bonuses and considers the need to maintain a balanced and diverse workforce;
- 7) Ensures that ICE's responsibilities under labor relations statutes and union agreements are fulfilled;
- 8) Develops appropriate written documentation justifying the payment of a recruitment bonus and the amount of the bonus in accordance with the criteria in this Directive;
- 9) Ensures that the employee signs the recruitment bonus service agreement prior to payment;
- 10) Obtains proper approval from the approving official, including a certification of the availability of funds, prior to the candidate entering Federal service.

- 11) Maintains a record of each written determination required by this Directive and makes such records available for review upon request by DHS and OPM.
- 12) Submits a report to the Secretary of DHS of each recruitment bonus determination.

7.3. ICE Program Office Directors:

- 1) Advise the Director, Office of Human Capital, of recruitment outcomes and retention concerns to provide a basis for decisions regarding the determination to offer recruitment bonuses.
- 2) Certify the availability of funds to pay bonuses and serve as authorizing official for payment.
- 3) When authorized to do so in the interest of an expedited process, review and approve the payment of a recruitment bonus on behalf of the Director, Office of Human Capital.
- 4) Choose, on a case-by-case basis, when to submit an employee for a bonus under this program.

7.4. The Chief Financial Officer provides advice and assistance to Program Office budget officials to facilitate financial planning for and implementation of the recruitment bonus program.

8. Procedures.

- 8.1. Document Rationale for Payment.** For each recruitment bonus paid, the employing office must document in writing the factors considered in authorizing the bonus, including the bonus amount, and the determination that, in the absence of the bonus, the office would encounter difficulty in filling the position. The office shall make this determination before the employee actually enters on duty in the position for which he or she was recruited.
- 8.2. Determine the Amount of the Recruitment Bonus.** The employing office must calculate a recruitment bonus as a percentage of the employee's starting annual rate of basic pay (excluding locality pay) at the time of appointment, not to exceed 25 percent.
- 8.3. Execute the Service Agreement.** The employing office completes the service agreement (See Attachment 1), indicating the Program Office (and subcomponent, if appropriate), the term of the agreement in months or years, and the amount of the recruitment bonus that will be paid. Any additional terms and/or conditions to be agreed upon may be indicated as part of the agreement. The approving official

must sign the service agreement prior to the candidate entering on duty. The newly appointed employee shall sign and date the agreement prior to payment.

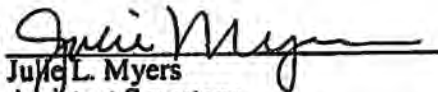
8.4. Payment.

- 1) The bonus is paid in one of two ways: (1) as an initial lump sum or (2) in installments over the course of the term of the service agreement. The payment method may be negotiated with the employee by the employing office. The payment method will be documented in the Service Agreement. The bonus is not considered part of an employee's rate of basic pay for any purpose. Recruitment bonuses paid under this authority are in addition to basic pay.
- 2) This bonus payment is 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.
- 3) A lump sum bonus may be paid to an individual not yet employed who has received a written offer of employment and signed a written service agreement.

9. ATTACHMENT. Recruitment Bonus Service Agreement.

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

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Recruitment Bonus Service Agreement**

NAME (Print or Type – First Middle Last)	Social Security Number	Employing Office
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In consideration of the recruitment bonus for which I qualify under 5 U.S.C. 5753, as implemented by the regulations of the Office of Personnel Management (5 CFR 575) and the policies of the U.S. Immigration and Customs Enforcement (ICE) and the

(Employing Program Office/Division)

I hereby agree to the following terms and conditions:

1. I will serve in _____
(Employing Program Office/Division)
for _____ months/years.
2. The service agreement is effective _____ through _____
(Month/Day/Year) (Month/Day/Year)
through _____ (MONTH/DAY/YEAR).
3. ICE will pay me a recruitment bonus of _____. This amount will be paid out using the following method of payment: _____

(Indicate whether (1) initial lump sum, (2) by installments, or (3) by final lump sum on completion of Service Agreement)
4. This service agreement in no way constitutes a right, promise, or entitlement for continued employment or noncompetitive conversion to the competitive service. Acceptance of this Agreement does not alter the conditions or terms of my employment; accordingly, this Agreement will not preclude nor limit ICE from effecting personnel action(s) as may be appropriate.
5. This Service Agreement shall terminate if (1) I am demoted or separated for cause, (2) I receive a less than satisfactory performance rating during the Service Period, or (3) I fail to fulfill any of the terms of the Agreement, e.g., I voluntarily leave the ICE employing Program Office before completing the agreed upon period of service. Under such circumstances, I understand and agree that I will not be entitled to any additional payments under this Agreement and that I will be indebted to the Federal Government and must reimburse ICE for a prorated portion of the recruitment bonus unless I am involuntarily separated (as defined in 5 CFR 575.703). The amount to be repaid will be determined by providing credit for each full month of employment I complete under the Service Agreement.
6. This Service Agreement may be terminated based solely on the needs of ICE management. Under such circumstances, I will retain all payments made to me under this Agreement and will be paid any additional amount attributable to completed periods of service.
7. I am responsible for any income tax obligation resulting from the recruitment bonus.

8. In addition, I agree to the following condition(s):

I AGREE TO THE TERMS AND CONDITIONS OF THIS SERVICE AGREEMENT:

Signature _____ Date _____

Name (Print/Type) _____

Approving Official _____ Date _____

Cc: Employee
Employee's OPF
Finance Office
Human Capital Office
Recommending Official
Approving Official

General: This information is provided pursuant to 5 U.S.C. 552a

Authority for Collection of Information: 5 U.S.C. 5753

Purposes and Uses: The main purpose for collecting the information requested on this form is to establish the terms under which an individual receives a relocation incentive under the DHS Relocation Incentive Program. The information collected will be used as a basis for payroll actions. Accordingly, disclosure of identifiable information, including your Social Security Number (SSN), may be made to the Internal Revenue Service for tax withholding purposes, the Department of Agriculture (National Finance Center) for payroll action, and to the Department of Labor for worker compensation claims. This information may also be disclosed to the Department of Justice for other lawful purposes, including law enforcement, and in the event of litigation. In addition, these records, or information derived from these records, may also be used within DHS for study purposes, such as projection of staffing needs, and/or creation of non-identifiable statistical data for reports to other Federal agencies and Congress.

Information Regarding Disclosure of Your Social Security Account Number: Disclosure of the SSN is mandatory since it is the identifier used by the Internal Revenue Service and for the withholding of taxes from your salary. The use of the SSN is necessary because of the large number of present and former employees and applicants who have identical names and birth dates, and whose identities can be distinguished only by the SSN.. The information gathered through the use of the number will be used only as necessary in personnel administration processes carried out in accordance with established regulations and published notices of systems of records.

Effect of Non-disclosure: Your submission of this Agreement is voluntary; however, if the Agreement is submitted, omission of significant information requested could preclude continued processing of the Agreement for you to receive a relocation incentive because payroll would be unable to process the necessary actions.

Recruitment Bonuses