



Chemical Safety and Hazard Investigation Board

SUBJECT: RETENTION INCENTIVE PLAN

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1. **PURPOSE.** This Order establishes general policies and procedures for the administration of a retention incentive program at the Chemical Safety and Hazard Investigation Board (CSB).
2. **REFERENCES.** This Order is intended to implement 5 U.S.C. § 5754 and 5 C.F.R. § 575.301 et seq.
3. **SCOPE.** The provisions of this Order apply to all current or newly appointed CSB employees serving under an appointment without time limitation in the following positions: (a) Positions in the General Schedule paid under 5 U.S.C. § 5332; (b) Senior-level, scientific or professional positions; and (c) Senior Executive Service (SES) positions, except those considered non-career appointee positions as defined under 5 U.S.C. § 3132(a).
4. **POLICY.** The CSB may pay a retention incentive to a current employee when it determines that (1) the unusually high or unique qualifications of the employee, or (2) the special need of the CSB for the employee's services, make it essential to retain the employee and that the employee would be likely to leave the federal service in the absence of an incentive.
5. **RESPONSIBILITIES.**
 - a. **Office Directors.** Make or review written recommendations and re-certifications for retention allowances. If the proposed action is appropriate, forward the proposal with appropriate recommendation to the HRD.
 - b. **Immediate Supervisors.** Make written recommendations for retention allowances and for re-certifications. At least annually, review each retention allowance. The form in Appendix B to this Order should be completed and submitted, along with a SF-52 (request for personnel action), to the Office Director for review.
 - c. **Human Resources Director.** The Human Resources Director (HRD) annually reviews this Order to assess whether the cost of individual benefits, taken collectively, is commensurate with the CSB's accomplishments, workforce planning, and financial condition. As part of this review, the HRD will take into account benchmarking information and appropriate private sector information. The HRD also maintains certain records related to the implementation of this Order (section 14) and is responsible for reviewing and updating this Order as appropriate once per year (section 15).
 - d. **Director of Financial Operations.** Reviews each proposed allowance to determine whether it is consistent with the overall financial condition of the CSB.
 - e. **General Counsel.** The General Counsel reviews the Plan once per year and each proposed incentive to ensure that the plan and the payment of any retention incentive is consistent with the requirements of 5 U.S.C. § 5754 and the provisions of 5 CFR secs. 575.301-315.

- f. **Chairperson.** The Chairperson or Board Member delegated personnel authority under CSB Order 003 is hereby authorized to review and approve payment of retention incentives. The Chairperson shall consult with each Board Member and consider Member opinions regarding the use of a retention incentive prior to the approval or renewal of any retention incentive. Additionally, the Chairperson shall provide each Board Member the projected period for the use of the retention bonus incentive and its relative impact on the Board budget.

6. **DEFINITIONS.**

- a. **Employee** means an employee of the CSB.
- b. **Rate of basic pay** means the rate of pay fixed by law or administrative action for the position to which an employee is appointed, before deductions, and including any special rate under 5 C.F.R. part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 C.F.R. part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind.
- c. **Service agreement** means a written agreement between the CSB and an employee under which the employee agrees to a specified period of employment with the CSB in return for payment of a retention incentive.

7. **ELIGIBILITY AND CRITERIA FOR PAYMENT.**

- a. **Categories of employees who are prohibited from receiving retention incentives.**
 - (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. 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 described in a. (1)-(3) above 1) To which an individual is appointed by the President without the advice and consent of the Senate; 2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or 3) In which the employee is expected to receive an appointment as the head of an agency.
- b. **Approval criteria and written determination.**
 - 1) Each incentive paid under this policy shall be based on a written determination that the unusually high or unique qualifications of the employee

or a special need of the CSB for the employee's services makes it essential to retain the employee and that, in the absence of such an incentive, the employee would be likely to leave the Federal service. Such determination must also include the basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period, if applicable.

- 2) In determining whether an employee is likely to leave the federal service in the absence of the proposed incentive, the approving official must document the determination using any of the following information:
 - An offer letter from a private sector employer or other specific evidence of a bona fide job offer;
 - Evidence that an employee is being actively recruited to pursue employment in the private sector;
 - Information demonstrating that other employees with similar skills have left the CSB to pursue more lucrative offers in the private sector and that the employee is similarly situated and likely to leave the federal service; or
 - Other supporting information or explanation sufficient to demonstrate that in the absence of an incentive the employee is likely to leave the federal service within the next 12 months.

- 3) In determining whether a retention incentive should be paid under b(1) & (2) and in determining the amount of any such payment, the recommending and approving official shall consider the following factors, as applicable in the case at hand:
 - Employment trends and labor market forces, such as the availability and quality of candidates in the labor market possessing the competencies required for the position and who, with minimal training, cost, or disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;
 - 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;
 - Special or unique competencies required for the position;
 - CSB efforts to use non-pay authorities to help retain the employee instead of or in addition to a retention incentive, such as special training and work scheduling flexibilities or improved working conditions;

- The desirability of the duties, work or organizational environment, or geographic location of the position;
 - The extent to which the employee's departure would affect the CSB's ability to carry out an activity, perform a function, or complete a project that is deemed essential to the mission;
 - The salaries typically paid outside the Federal Government; and
 - Other supporting factors.
- 4) A retention incentive may be paid only when the employee's rating of record is at least Fully Successful or higher.
- c. **Higher level review and approval.** Each recommendation made by an Office Director or immediate supervisor to pay a retention incentive, including the proposed amount of such incentive, shall be reviewed by and subject to the approval of the Chairperson. In the case of an incentive recommended by the Chairperson for someone who reports directly to the Chairperson, the reviewing and approving official shall be the Reviewing Official designated by the Chairperson under section 7.q. of Order 10 (Performance Appraisal Program).

8. PAYMENT OF A RETENTION INCENTIVE.

- a. **Retention incentive rate.** For each employee approved to receive a retention incentive, the Chairperson shall establish a retention incentive rate expressed as a percentage of the employee's rate of basic pay. The incentive rate, not to exceed 25 percent of the employee's rate of basic pay, shall be set based upon the criteria listed in section 7.b.(3) of this Order.
- b. **Method of payment.** As determined by the Chairperson at the time a retention incentive is approved, the incentive may be paid by either of the following methods:
- (1) Installments after the completion of specified periods of service – For this method, the amount of each installment payment will be calculated as specified by 5 C.F.R § 575.309(c)(1) and (c)(2).
 - (2) A single lump-sum payment after completion of the full service period – For this method, the amount of the lump-sum payment will be calculated as specified by 5 C.F.R. § 575.309(d).
- c. **Payment restrictions.**
- (1) The CSB may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period for which the retention incentive is being paid.

(2) The CSB may not authorize a retention incentive for an employee if or to the extent that such an incentive, when added to the employee's estimated aggregate compensation, as defined in 5 C.F.R. section 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 at the end of the calendar year.

9. **SERVICE AGREEMENT.**

- a. **Requirement.** Unless the exception described in paragraph b. of this section applies, an employee must sign a written service agreement to complete a specified period of employment with the CSB, before the CSB will pay a retention incentive to the employee.
- b. **Exception to requirement.** A written service agreement is not required if the CSB:
- (1) Pays a retention incentive to an employee in biweekly installments; and
 - (2) Sets each biweekly installment payment at the full retention incentive percentage rate established for the employee under the provisions of 5 C.F.R. § 575.309(a).
- c. **Service period.** The length of the service period required by a service agreement shall be determined by the Chairperson. In the event a CSB agency function, in which an employee covered by a service agreement works, is transferred to another agency, the service period will continue until completed with the successor agency.
- d. **Contents of service agreements.**
- (1) A service agreement must include the commencement and termination dates of the required service period. The service period must begin on the first day of a pay period and end on the last day of a pay period.
 - (2) A service agreement must also specify:
 - The retention incentive percentage rate established under the provisions of 5 C.F.R. § 575.309(a);
 - Whether the incentive will be paid in installments or in a lump-sum payment upon completion of the service period provided in the service agreement;
 - Whether any installment payments will be paid at less than the full retention incentive percentage rate established under the provisions of 5 C.F.R. § 575.309(a), with the accrued but unpaid incentive payment being paid in a lump sum upon completion of the full service period required by

the service agreement under the provisions of 5 C.F.R. § 575.309(c)(2);
and

- The timing of incentive payments.

(3) A service agreement must state the conditions, set forth in section 10.a. of this Order, under which the CSB must terminate the agreement before the employee completes the agreed-upon service period. The agreement must also specify the effect of such a termination, including the conditions under which the CSB will pay an additional retention incentive payment for partially completed service (see section 10.c. of this Order).

(4) A service agreement may include any other terms or conditions that, if violated, will result in a termination of the agreement for failure to fulfill the terms of the agreement (see section 10.a.(3) of this Order). For example, an agreement may specify the employee's work schedule, type of position, and the duties he or she is expected to perform. In addition, an agreement may address the extent to which periods of time on detail, in a non-pay status, or in paid leave status are creditable towards the completion of the service period.

- e. **Preparation, review, and approval of service agreements.** Proposed service agreements, including recommendations for those terms that the CSB has discretion in setting, shall be prepared by the HRD. All proposed service agreements will be reviewed for legal compliance by the Office of General Counsel. Following the satisfactory completion of such review, the HRD will submit proposed service agreements to the Chairperson for final approval.

10. **TERMINATION OF INCENTIVE SUBJECT TO A SERVICE AGREEMENT.**

- a. **Mandatory termination.** The Chairperson must terminate a retention incentive service agreement when he or she finds that any of the following circumstances exist or events have occurred:

(1) Changed conditions – conditions have changed such that the original determination to pay the retention incentive no longer applies (e.g., when the CSB assigns the employee to a different position that is not within the terms of the service agreement).

(2) Payment no longer warranted – the retention incentive payment is no longer warranted after considering factors such as:

- Whether the retention incentive is needed to retain the employee (or group of employees);
- Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group of employees); or

- Whether the CSB’s need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue paying a retention incentive.

(3) Adverse employment events:

- The employee is demoted or separated for cause (i.e., for unacceptable performance or conduct);
- The employee receives a rating of record of less than “Fully Successful” in accordance with the CSB Performance Appraisal Program (Board Order 010); or
- The employee otherwise fails to fulfill the terms of the service agreement.

b. **Discretionary termination.** The Chairperson may terminate unilaterally a retention incentive service agreement based solely on the management needs of the CSB, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, the CSB may terminate a service agreement when there are insufficient funds to continue the planned retention incentive payments.

c. **Retaining incentive payments after termination.**

- (1) Mandatory termination (not due to an adverse employment event) and discretionary termination – the extent to which an employee may retain incentive payments following these types of terminations will be determined in accordance with the provisions of 5 C.F.R. § 575.311(c).
- (2) Mandatory termination due to an adverse employment event – the extent to which an employee may retain incentive payments following this type of termination will be determined in accordance with the provisions of 5 C.F.R. § 575.311(d).
- (3) Determination of amount owed to employee – When an employee is entitled to retain incentive payments following the termination of a service agreement, the amount owed to the employee will be determined in accordance with the provisions of 5 C.F.R. § 575.311(e).

11. **CONTINUATION, REDUCTION, OR TERMINATION OF INCENTIVE NOT SUBJECT TO A SERVICE AGREEMENT.**

a. **Continuation.** For retention incentives that are paid when no service agreement is required (see section 9.b. of this Order), the General Counsel and the Chairperson must review each determination to pay the incentive at least annually to determine whether payment is still warranted. Their respective determinations as to whether payment is still warranted shall be certified in writing, using the form in Appendix B of this Order. The CSB may continue paying a retention

incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

- b. **Mandatory reduction or termination.** The Chairperson must reduce or terminate a retention incentive authorization when no service agreement is required whenever he or she finds that either of the following circumstances exists:
- (1) Changed conditions – conditions have changed such that the original determination to pay the retention incentive no longer applies (e.g., when the CSB assigns the employee to a different position that is not within the terms of the original determination).
 - (2) Payment no longer warranted – the retention incentive payment is no longer warranted at the level originally approved, or at all, after considering factors such as:
 - Whether a lesser amount (or none at all) would be sufficient to retain the employee;
 - Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee; or
 - Whether the CSB’s need for the services of the employee has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all).
- c. **Mandatory termination.** The Chairperson must terminate a retention incentive authorization when no service agreement is required when:
- (1) The employee is demoted or separated for cause (i.e., for unacceptable performance or conduct); or
 - (2) The employee receives a rating of record of less than “Fully Successful” in accordance with the CSB Performance Appraisal Program (Board Order 010).
- d. **Discretionary termination.** The Chairperson may terminate unilaterally a retention incentive authorization when no service agreement is required based solely on the management needs of the CSB, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, the CSB may terminate a retention incentive when there are insufficient funds to continue the planned retention incentive payments.
- e. **Receipt of final incentive payments.** When a retention incentive paid without a service agreement is terminated, the employee is entitled to receive any scheduled incentive payments through the end of the pay period in which the written notice of termination is provided, or until the date of the employee’s separation from the CSB, if the separation date is sooner.

12. **NOTIFICATION AND APPEAL.**

- a. **Notification.** If the CSB terminates a retention incentive service agreement, or reduces or terminates a retention incentive paid without a service agreement, the Chairperson shall notify the affected employee in writing as soon as possible after the termination or reduction decision is made.
- b. **No appeal.** The termination of a retention incentive service agreement or the reduction or termination of a retention incentive paid without a service agreement is not appealable or otherwise subject to reconsideration.

13. **RESTRICTIONS.** The CSB may not begin payment of a retention incentive during a period of employment established under any service agreement required for payment of a recruitment bonus under CSB Order 007. The CSB may pay a retention incentive to an employee if the employee is likely to leave the Federal service for any reason. The CSB may not offer a retention incentive to an individual (or authorize the payment of such an incentive) prior to the individual's employment with the agency.

14. **RECORDS AND REPORTS.** The HRD shall keep a record of each determination required in connection with a retention incentive that is sufficient to allow reconstruction of the action and make such records available for review upon OPM's request. The Chairperson or a designee is responsible for timely preparing a report to OPM on the use of incentives the previous fiscal year as a part of the CSB's regular submission to OPM's report to Congress. The report must include:

- A description of how the authority to pay retention incentives was used in the agency during the previous calendar year;
- The number and dollar amount of retention incentives paid during the previous calendar year to individuals by occupational series and grade, pay level, or other pay classification; and
- Other information, records, reports, and data as OPM may require.

15. **REVIEW AND UPDATE.** The HRD will be responsible for reviewing this policy annually to determine if there are any required changes. The Human Resources Director will provide a brief report (one page maximum) to the Chairperson no later than November 1st of each fiscal year setting forth any proposed revisions. At least once per year, the HRD will also meet with the Director of Financial Operations to review expenditures under this order.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

May 4, 2000; Amended, October 25, 2007; Amended July 6, 2009.

APPENDIX A

CRITERIA FOR PAYMENT OF RETENTION INCENTIVE--- In determining whether an incentive should be paid, the likelihood the employee will leave Federal Service, and the amount of the incentive, consider the factors below and address them in Item 6 on the form on the next page. The recommending official is responsible for completing this form and submitting it to the appropriate officials for review and approval.

Factors to Address as applicable based on the case at hand:

- Employment trends and labor market forces, such as the availability and quality of candidates in the labor market possessing the competencies required for the position and who, with minimal training, cost, or disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;
- 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;
- Special or unique competencies required for the position;
- CSB efforts to use non-pay authorities to help retain the employee instead of or in addition to a retention incentive, such as special training and work scheduling flexibilities or improved working conditions;
- The desirability of the duties, work or organizational environment, or geographic location of the position;
- The extent to which the employee's departure would affect the CSB's ability to carry out an activity, perform a function, or complete a project that is deemed essential to the mission;
- The salaries typically paid outside the Federal Government; and
- Other supporting factors.

**RECOMMENDATION AND APPROVAL OF
RETENTION INCENTIVE**

1. Name of
Employee/Candidate: _____

2. a. Current: Title, Pay Plan, Grade, Step,
Salary: _____
b. Proposed: Title, Pay Plan, Grade, Step,
Salary: _____

3. a. Current
Organization: _____
b. Proposed
Organization: _____

4. Amount or Percentage of Basic Pay Recommended: (check one)

// **Retention Incentive** (\$ or %) _____

(For a Retention Incentive, the aggregate compensation actually received by the employee during the calendar year cannot exceed the rate payable for Level I of the Executive Schedule, which as of January 1, 2009 was \$196,700)

5. (If applicable) Expected Duration of Retention
Incentive: _____

6. Justification (Attach memo)

As explained in the attached memorandum, the unusually high or unique qualifications of the employee or a special need of the CSB for the above employee's services makes it essential to retain this employee and, in the absence of the proposed incentive, the employee would be likely to leave the Federal service.

Signature of Immediate Supervisor (If applicable) _____
Date

Signature of Office Director _____
Date

Signature of Chairperson or Board Member Delegated personnel Authority under Board
Order 003

Date

APPENDIX B

**ANNUAL RECERTIFICATION OF
RETENTION INCENTIVE
NOT SUBJECT TO A SERVICE AGREEMENT**

Retention incentives not subject to a service agreement must be reviewed at least annually to determine whether payment of the incentive is still warranted. Such incentives can be continued only as long as the conditions giving rise to the original determination to pay the incentive still exist. Reductions or terminations of retention incentives are not appealable or otherwise subject to reconsideration. The reviewing officials should read sections 11 and 12 of Board Order 008 before completing this form.

1. Name of Employee:
2. Title, Pay Plan, Grade, Step, Salary:
3. CSB Office:
4. Percentage of Basic Pay Recommended: _____%
Amount of Retention Incentive: \$
5. Justification recommending **Continuation of Retention Incentive**. (Attach Memo)
6. Justification recommending **Reduction of Retention Incentive**. (Attach Memo)
7. Justification recommending **Termination of Retention Incentive**. (Attach Memo)

By my signature below, I certify that the determination set forth above and in the attached memorandum is correct and true:

Signature of General Counsel

Date

By my signature below, I certify that the determination set forth above and in the attached memorandum is correct and true:

Signature of Chairperson

Date