



**U.S. Customs and
Border Protection**

TO: Ryan J. Scudder
Directorate Chief
Strategic Planning and Analysis
U.S. Border Patrol

FROM: Renee Pierce
(A) Deputy Director, Labor Relations
Office of Human Resources Management

SUBJECT: Agency Head Review – Operational Mobility Program

The enclosed memorandum of understanding, signed January 27, 2021, concerns the procedures for the operational mobility program for U.S. Border Patrol. The memorandum of understanding was negotiated between U.S. Customs and Border Protection (CBP) and the National Border Patrol Council. The negotiated terms have been reviewed in accordance with 5 U.S.C. §7114(c) and under Department of Homeland Security, Customs and Border Protection Delegation Order 10-001, dated February 23, 2010.

This memorandum of understanding does not violate existing law, rule or regulation, and is hereby approved. This approval does not constitute a waiver of, or exception to, any existing law, rule, regulation, or policy.

Please note, in accordance with CBP Directive No. 2130-013, Labor and Employee Relations is the sole authority within CBP for the administration and oversight of labor and employee relations activities and provides national level program direction to all program offices within CBP.

If you have any questions or need additional assistance, you may contact Gabriela Smith, Labor Relations (LR) Specialist, at (202) 679-2487 or by e-mail at Gabriela.Smith@cbp.dhs.gov.

cc: Brandon Judd, President, National Border Patrol Council
Todd Boucher, Director, LER Field Services Division
Wayne Maglione, Associate Chief, Labor Division, USBP
CBP HQ LR Staff

Enclosure

Memorandum of Understanding
Between
U.S. Customs and Border Protection
And
National Border Patrol Council

Operational Mobility MOU

This Memorandum of Understanding (MOU) documents the agreement between U.S. Customs and Border Protection, U.S. Border Patrol (CBP or the Agency) and National Border Patrol Council (NBPC or Union) over the procedures by which relocations for U.S. Border Patrol bargaining unit employees are conducted and the roles of management and the NBPC.

- A. *This agreement is limited to vacancies the Agency chooses to fill under the terms of this agreement and, unless stated otherwise within this agreement, does not affect other types of transfers, reassignments or promotions.*
- B. This Memorandum of Understanding (MOU) supersedes all previous MOUs regarding funded relocation programs.
- C. Reassignment, unless defined otherwise, refers to the permanent change of an employee from one duty station to another, within the same occupational series, without promotion or demotion.
- D. This MOU is applicable to all eligible bargaining unit employees (BUE), to include those serving 120 days or less on a temporary non-bargaining unit detail/temporary promotion. (Ex. Acting SBPA, Acting BPA-I)
- E. To be eligible, employees must:
 - 1. Have passed their applicable probationary period; and,
 - 2. Have a minimum 3-years in service with the Agency; and,
 - 3. Not be the subject of:
 - a. Any pending performance improvement plan (PIP) and/or a performance demonstration period (PDP) or,
 - b. Proposed action of suspension of 7 or more days or termination; or,
 - c. Any open investigation being conducted by OIG or an investigation being conducted by OPR for an allegation which, if substantiated, the employee would typically receive a proposal of an adverse action (15 days or more), or,
 - d. A Last Chance Agreement; or,
 - e. Three or more disciplinary actions or a single adverse action (15-day suspension or more) within the last two years.

4. Not have received a funded relocation in the past four years.
 1. Exception for relocations in and out of hard to fill locations¹.
 - a. Restriction reduced to two years for employees applying to hard to fill locations.
 - b. Employees will regain eligibility after fulfilling two-year commitment at hard to fill location.
 5. Be able to perform all the required duties of the position description².
- F. Seniority will be determined as outlined in the 2019 Collective Bargaining Agreement, which is in force between NBPC and CBP.
- G. All employees who are approved for reassignment under this MOU will be ineligible for reassignment to a new duty location under this or any other relocation program for a period of four calendar years (two calendar years for hard to fill locations as indicated in Section E of this MOU) beginning the date they report to the new duty location; Relocations for promotion to a higher grade or positions outside the bargaining unit are excluded from this agreement.
- H. Funded Operational Mobility Relocations
1. Relocations will be conducted at a minimum of three times annually contingent on funding. The Agency may determine to offer additional relocations in order to meet operational requirements.
 - a. The Agency will attempt to solicit two of the announcements in the Spring and Fall respectively to coincide with relocation date consideration for employees with school aged children.
 2. The Agency will determine which vacancies will be filled under this agreement. Employees completing the terms of a Not to Exceed (NTE) appointment and in need of relocation to a bargaining unit position are not subject to the terms of this MOU. Such employees can be placed at any available location, as long as the location has first been offered under the 2021 operational mobility program.
 3. The Agency will attempt to first fill vacancies under this MOU prior to filling vacancies under a re-hire program.
 4. Funding of relocation of a person's household means the actual requirement to move household goods to another location beyond the "distance test"³ as outlined in the Federal Travel Regulations.

¹ Hard to fill locations will be determined by the Agency and clearly identified in the applicable announcement and any subsequent offer letter.

² Employees on light duty are not excluded from participating in this program.

³ "Distance Test" 302-2.6(a) The distance test is met when the new official station is at least 50 miles further from the employee's current residence than the old official station is from the same residence. For example, if the old official station is 3 miles from the

5. Procedures for Announcements
 - a. Announcements will be open for a period of at least 10 business days.
 - b. Employees will submit requests for relocation during each open period; requests do not carry over to other announcements.
 - c. Employees are required to submit a resume or will be marked as ineligible.
 - d. Employees will self-certify their seniority date at the time of application in accordance with Section F of this MOU.
 - e. Employees who misrepresent seniority date as outlined in Section F of this MOU will be ineligible for relocation for four years.
 - f. Employees may select up to two locations per announcement.
 - g. A copy of the anticipated duty locations and estimated number of vacancies will be provided to NBPC prior to public posting of the USAjobs announcement.

6. Selection Certificates
 - a. The Agency will generate a list of all employees referred.
 - b. Fifty percent of vacancies at each location will be selected based on seniority as determined in Section F. If an odd number of vacancies are to be filled, the odd number will be selected based on seniority⁴.
 - c. The remaining selections from paragraph (b) above will be made by the selecting official from the list of the remaining applicants to that position provided to them in Alpha order.

7. Withdrawal from Consideration Prior to Selection
 - a. An employee may withdraw from consideration for one or both locations by submitting a written request via email to CBP Hiring Center no later than 21 calendar days from the end of the announcement period and will not be subject to the two-year ban from participating in the program. If requests to withdraw are received after the 21 calendar days, the employee will be removed from both locations under that announcement, and will be subject to the two-year ban.
 - b. If a selection certificate is issued with an employee's name who withdrew from consideration, management will strike the name from the certificate prior to issuance to the selecting official.

8. Responding to a Relocation Offer
 - a. Employees must accept or decline a relocation offer from the Agency within 5-business days from the date the Agency issues offers.

current residence, then the new official station must be at least 53 miles from that same residence in order to receive relocation expenses for residence transactions. The distance between the official station and residence is the shortest of the commonly traveled routes between them. The distance test does not take into consideration the location of a new residence. This follows the distance guidelines found in *Internal Revenue Service Publication 521, Moving Expenses*.

⁴ For example: For nine vacancies, 5 will be selected by seniority and 4 will be selected in accordance with paragraph H(6)(c)

- b. Employees are encouraged to provide a secondary email address for job offer notifications with their USAjobs profile.
9. Selection Certificate Review - U.S. Border Patrol Headquarters will provide the NBPC with a copy of all final coded selection certificates which includes names and seniority dates and excludes any other PII and the gain/loss spreadsheet prior to making the informal offers to BPAs selected. The union will have 5 business days to raise any concerns.
10. Declination of a Relocation Offer
- a. Employees have 5 business days to accept or decline an offer under this MOU.
 - b. Any employee who declines a relocation offer at any time, or fails to respond to a relocation offer within 5-business days (non-response), will be removed from all relocation lists under that announcement and be ineligible to apply or receive consideration on future Op Mobility announcements for a period of two years from the date the announcement closed under the terms of this MOU. (The Agency agrees to share with NBPC the list of employees who have failed to respond to an offer. If a response is not received by the Agency within 48 hours of notifying NBPC, the ineligibility provisions will take effect.)
 - c. If an employee selected by seniority declines or withdraws from a relocation offer, or if other ineligible factors arise, the Agency will make a one additional round of selections in an attempt to fill the vacancy with an alternate candidate. The next name on the list in order of seniority will be selected to replace the vacancy.
 - d. If an employee declines a relocation offer who was selected under the other selection criteria of this agreement, the Agency may make a one additional round of selections in an attempt to fill the vacancy with an alternate candidate. The Agency selection will be made based upon the same provision that was used to select the original candidate. Any funding received for relocations not executed by employees in accordance with this MOU, must be repaid in full.
11. Reporting to New Duty Location
- a. Employees who do not own a residence must report to their new duty location within 45 calendar days from the EOD date acceptance unless granted an extension as per 11(d).
 - b. Employees who own a residence must report to their new duty location within 90 calendar days from the EOD date acceptance unless granted an extension as per 11(d).
 - c. The EOD date is the date both the losing and gaining sectors agree to, based on operational requirements.
 - d. Requests for extensions must be submitted to the CBP Hiring Center. The extension request must include the reason for the request, and evidence to

support the extension request. Both gaining and losing sectors must agree on a new reporting date.

- e. Employees are required to remain an employee of the Agency at the new duty location for at least one full year from reporting date to that location or they will be required to repay the full lump sum payment to the Agency with the following exceptions:
 - 1. Employee receives a promotion within CBP or is otherwise reassigned to a position outside of the bargaining unit.
 - 2. Moves at the requirement of CBP
 - 3. Qualifies for a relocation under the Spousal or Compassionate Transfer Program
 - 4. Involuntary separation from CBP; or,
 - 5. Moves back to the former duty location due to significant financial hardship due to the housing market provided that:
 - a. The former residence was listed at or below current market value
 - b. The former residence was listed longer than the average time on the market
 - c. There were no offers on the former residence within 5% of the asking price; and,
 - d. The employee was unable to continue to absorb the expense of the former residence.

12. Travel to the new duty location

- a. Travel will be assigned as “on duty” status and will be consistent with the current Federal Travel Regulations (FTR).
- b. Reasonable travel time for moving is a minimum driving distance as defined in the FTR.
- c. Border Patrol Agents must either work their required BPAPRA obligated overtime⁵ or incur a debt on travel-work days.
- d. Employees may use their government travel card for expenses directly related to the relocation up to the amount provided for through the lump sum payment as stated in paragraph 14 of this agreement and in accordance the FTR.

13. A cumulative total of 40 hours of Administrative Leave⁶ will be authorized for the purpose of pre and post-moving requirements to include finding a home.

⁵ Travel to another duty station is considered by OPM as a duty day. Agents under BPAPRA are required to work their scheduled duty day which includes BPAPRA obligated overtime, including any type of work normally allowed to be performed during BPAPRA obligated overtime hours

⁶ The Administrative Leave Act of 2016 restricts the amount of Administrative Leave to 10 days for a year. If an employee has already used 10 days of Administrative Leave for the year, the employee may not be granted additional hours of Administrative Leave and the employee would be required to request Annual Leave for the purpose of this section.

14. Payment

- a. Employees relocating as part of this program will receive the following lump sum amounts⁷ in lieu of any other relocation expenses:
 1. 1-person households with no house will receive \$13,600.
 2. Multiple person households with no house will receive \$25,625.
 3. 1-person households with a house will receive \$36,175.
 4. Multiple person households with a house will receive \$48,175.
- b. Employees who do not relocate their households will not be authorized a lump sum payment.
- c. Households where two CBP employees receive a relocation, only one lump sum payment will be paid in accordance with either subparagraph 2 or 4 above.
- d. Employees will receive lump sum payments via direct deposit.

I. Non-Funded Within Sector Permanent Change of Station (WS-PCS)

- a. The Agency will attempt to first fill vacancies under the paid move options of this agreement prior to filling vacancies under this section.
- b. Sector management will coordinate with USBP HQ to determine which vacancies can be filled under this section of the agreement.
- c. Sector management must announce to all sector personnel of the availability of positions to be filled under this section.
- d. Employees that are eligible under the terms of this agreement may request via memorandum to the CPA through their chain of command for moves under this section of the agreement.
- e. Approvals of such moves will be for available vacancies only.
- f. WS-PCS relocations are voluntary and all relocation costs associated with reassignments granted under this section are the responsibility of the employee.
- g. Administrative Leave not to exceed 40 hours for the WS-PCS may be approved at the discretion of the Chief Patrol Agent.
- h. If a sector receives multiple requests for the same positions, selection will be based on the procedures as outlined in section H(6) of this agreement.

J. Employees who misrepresent themselves in any part of the application process for a relocation under this agreement may be subject to disciplinary actions.


K. The terms of this agreement will become effective upon Agency Head Review and the signature of the parties and will continue in force until modified or terminated in accordance with the provisions of this MOU or mutual agreement of the parties, or upon expiration of the statutory authority.

⁷ Funding may change based on GSA approval of requested increases. The agency will pay the full amount authorized by GSA for funded relocations.


- L. Dependent upon funding and authority to conduct the Operational Mobility relocations, USBP will fund relocations as necessary to fill required positions.
- M. Nothing in this agreement negates the authority of the Agency to fill positions in accordance with the Merit Promotion Plan.
- N. Notwithstanding any other section of this MOU, this agreement will continue in effect as long as lump sum authority through GSA and funding is available.
- O. This MOU may be modified upon written agreement between both parties at any time.
- P. This MOU is subject to the provisions of 5 U.S.C. § 7114(c).

Signatures:

For the Agency

 1/25/21
 Ryan J. Scudder Date
 Chief, Strategic Planning and Analysis
 U.S. Border Patrol

For the Union

 01/07/21
 Brandon L. Judd Date
 President
 National Border Patrol Council

GABRIELA A SMITH Digitally signed by GABRIELA A SMITH
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 Gabriela Smith Date
 Labor Management Specialist
 CBP Human Resources