

Department of Veterans Affairs Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, Critical Skill Incentive Implementation

1. **PURPOSE:** The purpose of this notice is to provide implementation instructions for the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT) Act (P.L. 117-168), Section 909 on Critical Skill Incentives.
2. **POLICY:** On August 10, 2022, the PACT Act was signed into law. Section 909 of the PACT Act amended Subchapter I of chapter 7 of title 38 of the United States Code (U.S.C.) by adding section 706 to allow the Department of Veteran Affairs (VA) additional authority relating to the recruitment and retention of personnel. Specifically, section 706(d) grants VA the authority to provide employees a critical skill incentive based on a high-demand skill or a skill that is at a shortage. The authorities under section 706, including the authority in subsection (d) that is the subject of this notice, terminate on September 30, 2027. The Secretary of VA is authorized to provide critical skill incentives. The Secretary's authority has been redelegated pursuant to the corresponding delegation of authority, dated December 20, 2022, and can be found on [VA's publication's website](#).
3. **ELIGIBILITY:** Critical skill incentives may be paid to full-time, part-time, and intermittent employees, or a group of employees, with high-demand or shortage skills. Critical skill incentives will be processed on VA Form 10017-A, Authorization of Critical Skills Incentives. The following are conditions of eligibility:
 - a. The employee(s) possesses a high-demand or shortage skill;
 - b. The skill is directly related to the duties and responsibilities of the employee(s)'s position, and; and
 - c. Employment of an employee(s) with such skill in such position serves a critical mission-related need of the Department.
 - d. A written service agreement is required in all cases.
4. **CONDITIONS:** The following provisions apply to all employee(s) entering into a written service agreement for critical skills with the Department:
 - a. The shortage skill must be listed on an approved shortage list prior to the effective date of the authorization. Shortage occupation lists may be determined at VA/Staff Office, Administration, VISN/Area, and/or facility/field office level. If the authorization is based on shortage skills, recommending officials will identify the list used in block 17 on the VA Form 10017-A and specify the date the list was approved.
 - b. Recommending officials must list market factors when the authorization is based on a high-demand skill (see VA Form 10017-A, 18). Market factors may include

new employers creating competition for candidates, consistent use of above minimums to hire candidates or other appropriate factors.

- c. The commencement and termination dates of the required service period will be specified and must correspond with the beginning and end of a pay period. The minimum service period for a critical skill incentive is 28 days (2 Pay Periods) but not longer than 364 days (26 Pay Periods – 14 x 26).
- d. The amount of the incentive and the method of payment, including biweekly basis, any use of lump sum (up-front or at end of service obligation), or installment payments must be specified.
- e. The conditions under which the written agreement may be terminated before the agreed-upon service period has been completed and the effect of the termination, and any other terms and conditions under which the incentive is payable must be specified on the service agreement.
- f. Employees under a current service obligation (e.g., Recruitment, Relocation or Retention Incentives (3Rs) or Scholarship incentives) may simultaneously receive a critical skill incentive at the discretion of approving officials.
- g. VA approving officials may unilaterally terminate a service agreement based solely on the agency's management needs. If a service agreement is terminated by the agency, the employee is entitled to all incentive payments that are attributable to completed service and to retain any portion of an incentive payment already paid that is attributable to uncompleted service. Employees are not entitled to retain payments made if the termination is the result of demotion or separation for cause; receiving a record of less than "Fully Successful"; voluntarily move to another position not affected by the relocation or closure; voluntarily move to a different position in the same office, facility or organization subject to closure or relocation that is not covered by the service agreement; or failure to fulfill other terms of a service agreement such as reducing work hours. An employee who fails to complete a service obligation or otherwise fulfill the terms of a service agreement shall be indebted to the Federal Government for incentive payments received in excess of the amount that would be attributable to the completed portion of the service period (i.e., prorated), and must repay the excess amount of the incentive unless a waiver is approved. A repayment requirement also occurs when the approving official terminates a service agreement under the conditions in subparagraph VA Handbook 5007 Part VI, Chapter 2. The termination of a critical skill incentive is not grievable or appealable as authorization is based solely on the needs of the Department as determined by management.

- 5. SERVICE OBLIGATIONS:** The following conditions apply to a breach in service obligation and waiver procedures:
- a. When employees fail to complete a service obligation period because of a move (reassignment, promotion, etc.) within VA, but remains in a covered occupation, the gaining approving official has the option to continue the critical skill incentive and may work with the losing approving official if the movement of funds is required. New signatures are required on VA Form 10017-A and the service agreement when an obligation is continued. These forms must be completed prior to the effective date of the move (reassignment, promotion, etc.). If the gaining and losing approving officials cannot agree to continue the critical skill incentive, the move would be considered a breach of the original service agreement and the employee must be notified as soon as the decision is made.
 - b. The Under Secretary of the losing Administration is the approving official for waiver requests due to violations of service obligation periods when employees remain within the VA. The losing Staff Office's Principal Deputy Assistant Secretary or equivalent position is the approving authority for waiver requests for employees within VA Central Office and the Office of Information & Technology. Approving officials may use the process outlined in Human Resources Management Letter 05-18-02 for processing waivers. All or part of an employee's repayment requirements for breach of service agreements may be waived if there is a determination that recovery would be against equity and good conscience and not in the best interest of the United States.
 - c. The Assistant Secretary for Human Resources & Administration (ASHRA) is the approving official for any waiver requests for breaches of service obligations for employees that leave VA. Documents required and processing procedures will be consistent with Human Resources Management Letter 05-18-02.
 - d. Decisions on waiver requests are final within VA. However, this does not lessen or eliminate an employee's protection from Prohibited Personnel Practices as covered in 5 U.S.C. § 2302, and as governed by Equal Employment Opportunity laws, and/or as reviewed and remedied by the Office of Special Counsel.
- 6. LIMITATIONS:** The following limitations apply to critical skill incentives:
- a. Critical skill incentives provided to an employee(s) may not exceed 25 percent of the employee(s)'s annual rate of basic pay in effect at the beginning of the service agreement multiplied by one, if the agreement is for one year. If a service agreement is less than one year, recommending officials will prorate the time as appropriate. When calculating the percentage, an employee's rate of basic pay includes any locality-based comparability payment under 5 C.F.R. part 531, subpart F, or any special rate under 5 C.F.R. part 530, subpart C or 38 U.S.C. § 7455, but excludes additional pay of any kind, such as night shift differential or environmental differential. For critical skill incentives, market pay

for physicians, dentists and podiatrists under 38 U.S.C. § 7431(c) will be included in basic pay. Special pay for pharmacist executives and nurse executives is included in basic pay.

- b. Critical skill incentives are not considered basic pay for any purpose.
 - c. Critical skill incentives are not included in the calculation towards the aggregate limitations on compensation. However, critical skills incentives are included in the calculation towards the aggregate limitations for pharmacist executives as described in 38 U.S.C. § 7410(b)(6).
 - d. The value of the incentive will be proposed by the recommending official based upon the needs of the Administration/Staff Office; recommending and approving officials are required to be consistent with the application of this authority for identified high-demand or shortage skill(s). Incentive percentages and/or amounts are not grievable.
 - e. Administrations/Staff Offices may approve critical skill incentives through September 30, 2027. Critical skill incentives approved on, or prior to September 30, 2027, will be paid through the required obligation period.
 - f. The following categories of employees are excluded from eligibility:
 - (1) Political Appointees;
 - (2) Employees in the Senior Executive Service (SES) as a non-career appointee (as such term is defined under section 5 U.S.C. § 3132(a));
 - (3) Limited term appointees or limited emergency appointees in the SES serving in a position that is political in character; and
 - (4) Schedule C employees that have been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or that is determined to be political in character under regulations prescribed by Office of Personnel Management.
- 7. RESPONSIBLE OFFICE:** Office of the Chief Human Capital Officer (OCHCO) (05), Compensation and Classification Service (CCS) (055).
- 8. RELATED HANDBOOK:** VA Handbook 5007, Pay Administration, dated January 10, 2022.
- 9. RESCISSION:** This notice will be rescinded, and guidance published prior to expiration of this authorization on September 30, 2027.

CERTIFIED BY:

/s/
Guy T. Kiyokawa
Assistant Secretary for
Enterprise Integration

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Gina M Grosso
Assistant Secretary for
Human Resources and Administration/
Operations, Security and Preparedness

DISTRIBUTION: Electronic only

Attachment

SAMPLE CRITICAL SKILLS INCENTIVE SERVICE AGREEMENT

As a condition of being paid a critical skill incentive of (percentage) in connection with my service on a (full-time, part-time, or intermittent basis and number of normal hours each bi-weekly pay period) basis, in the position of (position) at (VA facility or VA Organization), I agree to serve (number of) bi-weekly pay periods of employment with the Department of Veterans Affairs (VA). Service in a non-pay status will not count towards satisfaction of this obligation. Any portion of a pay period in a non-pay status will postpone the service obligation to VA and will extend the period of obligated service by an equal number of full bi-weekly pay periods.

I understand that the incentive will be paid to me as (method of payment) on (timing and amount of each payment). My service period beginning date for this agreement is (must be the first day of a pay period) and my service period ending date is (must be last day of a pay period). I understand that this incentive cannot exceed 25% of my basic rate of pay.

I understand VA approving officials may unilaterally terminate this agreement based solely on the management needs of VA. If VA does so, I will be entitled to all critical skills incentive payments that are attributable to the already-completed portion of the service period.

I understand that this agreement will be terminated if I am demoted or separated for cause, receive a rating of record of less than "Fully Successful" or equivalent, or fail to fulfill other terms of this agreement (such as loss of critical skill, changing positions, and other such conditions that may warrant termination). If this agreement is terminated under these conditions, I understand that I am entitled to retain any incentive payments previously paid by VA that are attributable to the completed portion of the service period. I understand that if I received incentive payments that are less than the amount that would be attributable to the completed portion of the service period, VA is not obligated to pay me the amount attributable to completed service. I understand that if I apply and am selected for a position at a VA facility or VA organization other than the one that is party to this agreement, the gaining VA facility or VA organization is not required to assume this critical skills incentive obligation. A transfer of function at the agency request does not result in the termination of a CSI.

In the event of a transfer of function or voluntary reassignment, the remainder of the service obligation may be satisfied with the successor VA facility upon mutual agreement.

I understand that I will be notified in writing of any reduction or termination of my critical skills incentive and will be entitled to receive incentive payments through the end of the pay period in which the written notice is provided or until I separate from VA employment, or whichever is sooner. **Note: Critical skill(s) incentives do not count towards the aggregate limitation on pay. However, critical skills incentives are included in the calculation towards the aggregate limitations for pharmacist executives as described in 38 U.S.C. 7410(b)(6).**

I understand that this agreement is valid only when signed by me, the recommending official, and the approving official.

(Signature, Name, and Title of Individual) (date)

(Signature, Name and Title of Recommending Official) (date)

Basis for Approval: Skill that is at a Shortage / High Demand Skill (Choose one)
Shortage List / High Demand Factors has/have been identified on the VA Form 10017-A.

APPROVED: I certify that payment of an incentive is appropriate and meets the criteria for approval as contained in VA Policy Notice 22-0X for Critical Skills Incentive.

(Signature, Name, and Title of Approving Official) (date)