

## DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY POLICIES AND PROCEDURES FOR FEDERAL IMMIGRATION CONTACTS

### PURPOSE

This policy sets forth the process that the HBX Health Benefit Exchange Authority (HBX) should follow if federal Immigration and Customs Enforcement (ICE) officials contact employees or contractors or come on site.

Throughout this policy, the term “ICE” also includes other federal agencies who may visit HBX for immigration-related purposes, including the US Citizenship and Immigration Services (USCIS) Fraud Detection and National Security unit, the Department of Justice Immigrants and Employee Rights Section, or the U.S. Department of Labor Wage and Hour Division.

### GENERAL PRINCIPLES

- **Office security** – HBX employees and contractors shall maintain the security of our offices, the security of the data we hold, and the orderly functioning of our operations. These imperatives mean that no visitor—including an ICE agent—may access DC government office space without lawful authority and an escort. However, employees or contractors should never physically resist a law enforcement officer, or otherwise place themselves or others in danger or at risk, but should simply report the agent’s arrival to designated staff.
- **Lawful compliance** – This policy supports appropriate cooperation with ICE under 8 U.S.C. §1373. HBX will comply with any lawful subpoena or court order, or any written request for information by ICE that is reasonable in scope and consistent with ICE authority and the Constitution.
- **Responses to ICE are voluntary** – No one is required to speak with an ICE agent unless the agent presents a named warrant signed by a judge. Thus, HBX managers shall never require employees or contractors to answer questions from ICE. However, managers may excuse an employee or contractor under their supervision from their work stations, without charge to leave, if the proposed interviewee wishes to respond voluntarily to ICE inquiries.
- **HBX does not represent employees or contractors** – HBX is committed to respecting the legal rights of employees and contractors. No HBX employee or contractor may hold him/herself out as representing an employee or contractor before ICE or advising an employee or contractor about any interaction with ICE.
- **Agency General Counsel** –All ICE matters should be handled by the HBX Office of the General Counsel (HBX OGC). Thus, an HBX employee or contractor who encounters an apparent ICE agent should refer the agent to the HBX OGC, or, if no one from HBX OGC is available, senior management.

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- **Targeting is prohibited** – the DC Human Rights Act forbids discrimination based on protected classes such as race, color, religion, national origin, and personal appearance. Managers should consider and document whether an ICE agent appears to be targeting individuals and/or records based on a protected class.
- **ICE may not conduct interviews in HBX office space** – DC Government facilities are not available for immigration interviews that lack a criminal nexus. An employee or contractor may meet an ICE agent outside the building or in a public lobby or reception area.

## ICE CONTACTS

### Telephone Calls

If an HBX employee or contractor receives a telephone call from an ICE agent during the course of business, that individual should direct the agent to the HBX Office of General Counsel or, if he/she is not immediately available, the Senior Deputy Director, the Chief Operating Officer, or the main reception line. HBX OGC will assess and respond to the request.

### On-Site Visits

An ICE official may make first contact at an HBX reception area or directly with an employee or contractor.

#### *1) Initial Contact at Reception*

ICE agents, like all visitors to HBX sites, should follow guest procedures. If an ICE agent presents at an HBX reception area, the receptionist should contact HBX OGC or, if he/she is not immediately available, the Senior Deputy Director or the Chief Operating Officer. The receptionist should **not** put the ICE agent in direct contact with other employees or contractors, even if the agent presents a badge or warrant.

#### *2) Initial Interaction*

Employees or contractors who encounter an ICE agent in an HBX workspace (where the site does not have a reception desk, or the agent bypasses reception) must take the following steps:

- a. Employee or contractor should ask the ICE agent to show a badge and provide a business card.
- b. Employee or contractor should ask the ICE agent to stay in (or return to) the HBX reception area or public lobby to wait for an agency representative who can assist.
- c. Employee or contractor should immediately contact the senior-most manager or supervisor readily available on-site, inform him/her about the ICE agent's visit, and give him/her any business card the agent provided.
- d. Managers and supervisors should immediately report information received to the HBX OGC, the Senior Deputy Director, the Chief Operating Officer, and the Executive Director.
- e. Employees and contractors should act in accordance with HBX privacy and security policies

## Responding to ICE

Only the HBX OGC (or senior manager where counsel is not on-site but has provided guidance) should interact with an ICE agent beyond the first encounter. In meeting with the ICE agent in person or speaking to an ICE agent over the phone, the HBX OGC/senior manager shall:

- 1) If in person, be sure the agent is in a public lobby or reception area and not workspace (returning the agent to a public lobby or reception area if necessary).
- 2) Ask the agent for identification if in person. Request the purpose of the visit, including the name(s) of any persons of interest. Request and review any supporting paperwork. Get a business card or, if none is available, request and notate full identity and contact information for the ICE agent.
- 3) Assess ICE agent authority and stated purpose.
  - a. Where the ICE agent's authority or purpose is not supported or is vague or confusing, deny entry to HBX premises, individuals, or documents and escort the agent out, informing the agent that the request will be referred to the District's Office of the Attorney General (OAG). Immediately contact OAG.
  - b. Where the ICE agent's authority and purpose are supported, cooperate appropriately, for example:
    - If pursuant to a lawful warrant signed by a judge, by facilitating contact with a person, access to documents, or a space.
    - If not pursuant to a warrant, by appropriately referring requests for documentation or informing persons of interest of the ICE agent's request to meet them.
- 4) Where the ICE the agent seeks to speak with a single person of interest, and the ICE agent's authority and the stated purpose are supported under 3.b above:
  - a. Ensure that the ICE agent remains in the public lobby or reception area while waiting.
  - b. Find the person of interest, but do **not** disclose the ICE inquiry to others and minimizing the number of people involved.
  - c. Share with the person of interest the agent's business card or identifying information and tell them the agent wants to speak to them.
  - d. Emphasize that the General Counsel/legal team member/manager is not directing the person of interest to meet with ICE, but relaying the message from the agent.
  - e. Tell the person of interest they may contact anyone they wish (including their immigration counsel), before speaking with the ICE agent. Offer to provide referrals to *pro-bono* immigration legal aid.
  - f. If the person of interest agrees to meet with the ICE agent and the ICE agent is on site, accompany the person of interest to the public lobby or reception area, introduce them to the agent, and then wait nearby until the meeting ends where practicable. The meeting should not take place on HBX premises. The ICE agent should not be brought into HBX office space.
- 5) Where the ICE agent presents a judicial warrant, assist the agent to meet the requirements of the warrant and strictly observe the limits of the warrant to ensure that the agent receives the information described in the warrant, but nothing more. Get a copy of the warrant.

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- 6) If the agent takes or copies HBX documents or photographs HBX space, list or get copies of the documents and any photograph.
- 7) In any encounter with an ICE agent, consider and document whether the agent appears to be targeting individuals and/or records based on a protected class.

### **Document Requests**

Document requests to HBX shall be handled in accordance with applicable federal and local privacy and security laws and regulations and with applicable provisions of the Merit Personnel Act and the District Personnel Manual.

### **Notifications**

- 1) Any HBX employee or contractor approached by an ICE agent by phone or on-site shall immediately notify any available supervisor or manager.
- 2) Supervisors and managers shall immediately notify the HBX Office of General Counsel, the Senior Deputy Director, the Chief Operating Officer, and the Executive Director. The Executive Director or his/her designee shall notify the HBX Executive Board Operations Committee, the Office of the Attorney General, the Mayor's General Counsel, and the Deputy Mayor for Health and Human Services.
- 3) If a person of interest to an ICE agent is a contractor, the HBX OGC shall immediately notify the vendor for that individual.
- 4) The Executive Director or his/her designee shall notify the heads of other agencies where appropriate, such as in cases of physical co-location.
- 5) Generally, HBX shall seek to ensure that HBX receives timely notification of ICE visits from other agencies where appropriate, such as in cases of physical co-location.

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