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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 550, and 575

RIN 3206-AE21

Aggregate Limitation on Pay; Advances in Pay; Recruitment and Relocation Bonuses; and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations governing several related provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA). These provisions authorize the payment of recruitment and relocation bonuses, retention allowances, and advances in pay to certain categories of Federal employees and establish a limitation on the aggregate compensation that may be received by any employee. The interim regulations (1) delegate authority to Federal agencies to pay recruitment and relocation bonuses and retention allowances to General Schedule and certain other employees, (2) establish criteria and procedures for the payment of such bonuses and allowances, (3) establish procedures for making advances in pay to employees, and (4) establish rules for administering the aggregate limitation on pay.

DATES: The amendments made by sections 107 and 208 of FEPCA and the interim regulations set forth below are effective on March 28, 1991; comments must be received on or before May 28, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, U.S. Office of Personnel Management, Room

7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 606-2818 or (FTS) 266-2818.

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990) includes provisions that are designed to facilitate the recruitment or relocation of high quality employees and the retention of high quality employees or those for whom the Government has a special need. In addition, FEPCA authorizes agencies to make advances in pay of up to 2 pay periods to newly appointed employees and establishes an annual limitation on aggregate compensation. Each of these provisions is discussed in further detail below.

Recruitment, Relocation, and Retention Payments

The Office of Personnel Management has exercised its authority under 5 U.S.C. 1104(a)(2) to permit the head of each agency to pay a recruitment or relocation bonus or a retention allowance as authorized by 5 U.S.C. 5753 or 5754 to a General Schedule employee (including an employee under the Performance Management and Recognition System) who meets the statutory and regulatory criteria for such payment. In the case of recruitment and relocation bonuses, the interim regulations authorize the head of each agency to determine whether the agency would be likely, in the absence of such a bonus, to encounter difficulty in filling a General Schedule position with a high quality candidate. In the case of retention allowances, the interim regulations require the head of the agency to determine whether a General Schedule employee would be likely to leave the Federal service for employment outside the executive, legislative, or judicial branch of the Federal Government in the absence of such an allowance.

Sections 5753(e) and 5754(e) of title 5, United States Code, permit the President to authorize the application of recruitment, relocation, and/or retention payments with respect to one or more categories of employees of an agency who would not otherwise be covered by these provisions of law upon the request of the head of the agency. Under section 9(b) of Executive Order 12748 of February 1, 1991, the President has

delegated this authority to the Director of OPM. The interim regulations further delegate the authority to make such payments directly to heads of agencies with respect to the following categories of employees (excluding heads of agencies): (1) Employees in senior-level or scientific or professional positions paid under 5 U.S.C. 5376 (after this new pay system is made effective by OPM), (2) members of the Senior Executive Service paid under 5 U.S.C. 5383, (3) law enforcement officers within the meaning of 5 U.S.C. 8331(20) or 8401(17), (4) employees in positions under the Executive Schedule (or equivalent positions), and (5) Presidential appointees in the executive branch. Under the interim regulations, the same criteria, procedures, and documentation requirements apply for these categories of employees as for General Schedule employees.

Under Executive Order 12748, the Director of OPM retains authority to extend the application of recruitment, relocation, and/or retention payments to any other category or categories of employees of an agency upon the request of the head of the agency. Therefore, the head of an agency may make a written request to the Director of OPM at any time to authorize the application of one or more of these payments to a particular category or categories of employees of the agency. OPM will give prompt consideration to such requests.

While agencies are granted authority to pay bonuses and allowances, the procedural requirements set out in the interim regulations are intended to help ensure that these authorities are used selectively and judiciously. To avoid both the reality and perception of misuse of these authorities, OPM will (1) prescribe agency reporting and recordkeeping requirements on the use of these authorities; (2) request data from agencies for use in conducting statistical analyses; (3) periodically, or as suggested by statistical analysis or other data, review individual agency activities; and (4) revoke or curtail agency discretion to exercise these authorities if OPM finds that the agency has not used these authorities appropriately and in conformance with the law, these regulations, and agency plans.

Many of the requirements are similar for recruitment and relocation bonuses

and retention allowances. For example, for each kind of payment, the head of each agency must establish an internal plan that designates agency officials with authority to review and approve payments and establishes (1) agency criteria for authorizing payments and determining the amount of a payment, (2) procedures for making payments, and (3) documentation and recordkeeping requirements sufficient to allow reconstruction of the action. (Plans for recruitment and relocation bonuses also must include requirements for service agreements.)

For each kind of payment, the interim regulations require review and approval by a higher level official, though a limited exception applies in the case of recruitment bonuses. (See 5 CFR 575.104(b)(2).) Notwithstanding this exception, the determination to pay a bonus or allowance must be made on a case-by-case basis for each employee. Virtually identical internal evaluation, recordkeeping, and reporting requirements also apply in all three cases.

Though there are many similarities among the procedural requirements established for recruitment, relocation, and retention payments, these authorities are designed to deal with three distinct employment situations. Recruitment bonuses may be paid only by newly appointed employees (including those returning to Federal employment after a break in service of at least 1 year). Relocation bonuses may be paid only to current employees who must relocate from one agency to another in a different commuting area (without a break in service) or from one part of an agency to another part of the same agency in a different commuting area (without a break in service). Retention allowances may be paid only to current employees (including those eligible for retirement) who would otherwise be likely to leave the Federal service for employment outside the Federal Government. The criteria established by the interim regulations for payment of recruitment and relocation bonuses are similar to one another, but those for payment of retention allowances are somewhat different. (Compare 5 CFR 575.104(c) and 575.204(c) with 5 CFR 575.305(c).)

Several of the authorities established under or amended by FEPCA may be used in combination with one another. For example, an agency may use the superior qualifications appointment authority (5 U.S.C. 5333 and 5 CFR 531.203(b), now authorized for use at any General Schedule grade level) or the "highest previous rate" provisions of

OPM regulations (5 CFR 531.203(c)), if applicable, to establish a higher rate of basic pay for a newly appointed employee. At the same time, the head of the agency also may authorize payment of a recruitment bonus for the same employee. However, in making such a determination, the agency should carefully weigh the relative advantages and disadvantages of each form of payment. A higher rate of basic pay increases retirement, life insurance, premium pay, and certain other entitlements and has a continuing effect on the employee's future pay entitlements (for example, upon promotion). A recruitment bonus may be preferable to a higher rate of basic pay when the agency needs additional flexibility to attract a particular candidate, but does not wish to disturb basic pay alignments among current employees performing similar work.

Under the interim regulations, a relocation bonus may be paid to a current employee who has received a recruitment bonus even if the employee is still serving under a service agreement established for the recruitment bonus. We anticipate, however, that this flexibility will be exercised only in very rare situations in which the possibility of relocation to another commuting area could not have been anticipated when the recruitment bonus was paid. The interim regulations prohibit payment of a retention allowance to any employee who has not completed at least 1 year of continuous service with the employing agency immediately prior to such payment or who has received a recruitment or relocation bonus and is still serving under a service agreement. (See 5 CFR 575.304(a).)

OPM plans to issue additional guidance on recruitment, relocation, and retention payments through the Federal Personnel Manual in the near future.

Advances in Pay

FEPCA authorizes agencies to make advances in pay covering not more than 2 pay periods for newly appointed employees (5 U.S.C. 5524a). The interim regulations defined the term "newly appointed" to include appointment following a break in service of at least 90 days. Unlike recruitment bonuses, which by law may be paid to an individual who has received a written offer of employment from the agency, advances in pay may be made only to an employee who has actually received an appointment.

Under the interim regulations, an advance in pay includes (1) annual premium pay for standby duty, (2) night differential for prevailing rate (wage)

employees, (3) a special rate of pay, and (4) locality-based comparability payments or interim geographic adjustments.

The interim regulations require each agency to establish written procedures governing advance payments. (See 5 CFR 550.204(a).) Before making an advance payment, the agency must require the employee to sign an agreement to repay the advance and must provide the employee with certain information in writing. (See 5 CFR 550.204(c).) The interim regulations permit an agency to recover an advance in pay by installments under agency procedures for payroll deduction or by salary offset procedures established under 5 U.S.C. 5514 and 5 CFR part 550, subpart K. The maximum period of time an agency may establish for recovery of an advance payment is 13 pay periods beginning on the date of the employee's appointment, unless recovery is accomplished by salary offset procedures and a longer period is necessary to avoid exceeding the 15 percent of disposable pay limitation described in 5 CFR 550.1104(i).

Under criteria to be established by each agency, 5 U.S.C. 5524a(c) permits the head of an agency to waive all or part of an advance payment if he or she determines that recovery would be against equity and good conscience or against the public interest.

Aggregate Limitation on Pay

FEPCA establishes a new aggregate limitation on pay. This limitation applies to members of the Senior Executive Service, who previously were covered by an aggregate limitation that was applied on a fiscal year basis under 5 U.S.C. 5383(b)(1), as well as to most other Federal employees. Under 5 U.S.C. 5307, a covered employee may not receive any allowance, differential, bonus, award, or other similar payment under title 5, United States Code, in any calendar year to the extent such payment, in combination with the employee's basic pay, would exceed the rate payable for level I of the Executive Schedule at the end of that calendar year. Amounts in excess of that amount generally will be paid at the beginning of the next calendar year.

The aggregate limitation on pay applies to basic pay, allowances, differentials, bonuses, awards, and other similar cash payments made under title 5, United States Code. Some of these payments are made on a one-time basis, and some are paid at the same time and in the same manner as basic pay. The interim regulations classify these

payments as "lump-sum payments" and "continuing payments," respectively.

Note: With the exception of night and environmental differentials for prevailing rate (wage) employees, both of which are considered part of basic pay for this purpose, premium pay for General Schedule and wage employees is not subject to the aggregate limitation on pay under 5 U.S.C. 5307. Premium pay for most General Schedule employees continues to be subject to a biweekly or annual maximum earnings limitation under 5 U.S.C. 5547.

The interim regulations employ the distinction between "lump-sum payments" and "continuing payments" to simplify administration of the aggregate limitation on pay and to minimize the likelihood that employees will build up large amounts of continuing payments that would be carried over from 1 calendar year to the next and paid only upon separation or death, thus potentially obligating the expenditure of appropriated funds for several years in advance. Under the interim regulations, an agency may not authorize any discretionary continuing payment that would cause the total of all continuing payments at any time to exceed the rate then payable for level I of the Executive Schedule. (See 5 CFR 530.203(c).) Examples of discretionary continuing payments include retention allowances, supervisory differentials, and physicians comparability allowances. Nondiscretionary continuing payments (e.g., basic pay, locality-based comparability payments or interim geographic adjustments, cost of living allowances, post differentials, and remote worksite allowances) are not subject to this regulatory restriction.

Finally, the interim regulations (1) provide that nondiscretionary continuing payments may not be discontinued or deferred for any period of time in order to make a lump-sum payment or discretionary continuing payment that would otherwise cause an employee's pay to exceed any of the limitations in these regulations, and (2) establish an order of precedence for nondiscretionary continuing payments and any previously authorized physicians comparability allowance when the total of such payments exceeds the rate then payable for level I of the Executive Schedule. (See 5 CFR 530.203 (e) and (f)).

Conforming Change

In addition to the interim regulations described above, OPM also has made a conforming change in the interim regulations on interim geographic adjustments published in the Federal Register on January 9, 1991 (56 FR 771). This change is necessary to make clear

that interim geographic adjustments are considered part of an employee's "rate of basic pay" for the purpose of making advances in pay.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The recruitment and relocation bonus, retention allowance, advances in pay, and aggregate limitation on pay provisions of FEPCA must be made effective no sooner than 90 days and no later than 180 days after enactment. The notice is being waived and the regulation is being made effective immediately to make these new authorities effective on the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and individuals who have been or will be appointed to Federal positions.

List of Subjects

5 CFR Parts 530, 531, and 575

Administrative practice and procedure, Government employees, Wages

5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 is revised to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748; subpart B also issued under sec. 302(c) of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509, 104 Stat. 1462).

2. A new subpart B is added to read as follows:

Subpart B—Aggregate Limitation on Pay

Sec.

530.201 Purpose.

530.202 Definitions.

530.203 Administration of aggregate limitation on pay.

530.204 Payment of excess amounts.

530.205 Records.

Subpart B—Aggregate Limitation on Pay

§ 530.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5307, which limits an employee's aggregate compensation to the rate payable for level I of the Executive Schedule at the end of the calendar year.

§ 530.202 Definitions.

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

Aggregate compensation means the total of—

(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom chapter 51 of title 5, United States Code, applies;

(2) Locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509);

(3) Incentive awards and performance-based cash awards under chapters 45, 53, and 54 of title 5, United States Code;

(4) Recruitment and relocation bonuses under 5 U.S.C. 5753;

(5) Retention allowances under 5 U.S.C. 5754;

(6) Supervisory differentials under 5 U.S.C. 5755;

(7) Allowances and differentials under chapter 59 of title 5, United States Code;

(8) Continuation of pay under 5 U.S.C. 8118;

(9) Other similar payments authorized under title 5, United States Code, excluding premium pay under chapter 55 of that title and §§ 532.503, 532.507, and 532.509 of this chapter (for prevailing rate employees); overtime pay under the Fair Labor Standards Act of 1938, as amended, and Part 551 of this chapter; and severance pay under 5 U.S.C. 5595; and

(10) Back pay under 5 U.S.C. 5596 for any component(s) of aggregate compensation in paragraphs (1) through (9) of this definition allocable to any period of time during the calendar year in which back pay is paid.

Basic pay means the total amount of pay received during any 1 calendar year

at the rate fixed by law or administrative action for the position held by an employee, including night and environmental differentials for prevailing rate employees under 5 U.S.C. 5343(f) and § 532.511 of this part, respectively, but before any deductions and exclusive of additional pay of any other kind.

Continuing payment means basic pay and any other form of pay included in an employee's aggregate compensation that is paid in the same manner and at the same time as basic pay, including, but not limited to, locality-based comparability payments or interim geographic adjustments, retention allowances, supervisory differentials, cost-of-living allowances, post differentials, remote worksite allowances, and physicians comparability allowances.

Discretionary continuing payment means a continuing payment whose amount is not fixed in advance by law or regulation by virtue of the geographic location and/or pay system of the position held by an employee or the nature of work assigned to an employee and which an agency has discretion to pay or not to pay to a particular employee.

Employee has the meaning given that term in 5 U.S.C. 2105.

Lump-sum payment means an amount of pay included in an employee's aggregate compensation that is paid to an employee not in the same manner or at the same time as basic pay, including, but not limited to, incentive awards, performance awards, Senior Executive Service Presidential rank awards, recruitment and relocation bonuses, uniform allowances, and excess amounts paid under § 530.204(a) of this part.

§ 530.203 Administration of aggregate limitation on pay.

(a) No executive branch employee (or General Schedule employee in the legislative or judicial branch) may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year to the extent such payment, in combination with the employee's basic pay (whether received under title 5 or otherwise), would cause the employee's aggregate compensation to exceed the rate payable for level I of the Executive Schedule on the last day of that calendar year.

(b) The limitation described in paragraph (a) of this section applies to the total amount of aggregate compensation actually received by an employee during the calendar year, without regard to the period of service

(if any) for which such compensation is received.

(c) An agency may not authorize a discretionary continuing payment for an employee if or to the extent that such payment, when added to the annual rate of all other continuing payments to which the employee is then entitled, would cause the annual rate of all continuing payments to exceed the rate then payable for level I of the Executive Schedule.

(d) At the time a lump-sum payment is made to an employee, the employee may not receive any portion of such payment that, when added to the annual rate of any continuing payments to which the employee is then entitled and any lump-sum payments the employee may have received earlier in the same calendar year, would exceed the rate then payable for level I of the Executive Schedule. Any portion of a lump-sum payment not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

(e) Nondiscretionary continuing payments may not be discontinued or deferred for any period of time in order to make a lump-sum payment or discretionary continuing payment that would otherwise cause an employee's pay to exceed any of the limitations described in or established by this section.

(f) If the annual rate of all nondiscretionary continuing payments to which an employee is entitled and any previously authorized physicians comparability allowance at any time exceeds the rate then in effect for level I of the Executive Schedule, the agency shall make such payments in the following order: basic pay; locality-based comparability payments or interim geographic adjustments; other nondiscretionary continuing payments, in chronological order of authorization; and any previously authorized physicians comparability allowance. Any portion of a nondiscretionary continuing payment or physicians comparability allowance not payable under this paragraph, as well as any other discretionary continuing payment authorized before the date on which this paragraph became applicable to the employee, shall become available for payment as provided in § 530.204 of this part.

§ 530.204 Payment of excess amounts.

(a) Except as provided in § 530.203(d) of this part or paragraph (c) of this section, amounts in excess of the limitations described in or established by § 530.203 of this part shall be paid to the employee in a lump sum at the

beginning of the following calendar year. The amount so paid shall be considered part of the employee's aggregate compensation for the new calendar year.

(b) If an employee transfers to another agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the individual when the excess amount was created.

(c) The following conditions permit payment of excess aggregate compensation without regard to the calendar year limitation:

(1) If an employee dies, the excess amount is payable immediately as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(2) If an employee separates from the Federal service, the entire excess amount is payable following a 30-day break in service. If the individual is reemployed in the Federal service in the same calendar year as separation, any previous payment of an excess amount shall be considered part of that year's aggregate compensation for the purpose of applying the limitations described in § 530.203 of this part for the remainder of the calendar year.

(d) Compensation for employees outside the General Schedule in excess of the limitation described in paragraph (a) of this section attributable to the payment of a performance-based cash award under 5 U.S.C. 4505a(d), a recruitment or relocation bonus under 5 U.S.C. 5753(e), or a retention allowance under 5 U.S.C. 5754(e) may not be paid to an employee under this section.

§ 530.205 Records.

Each agency shall maintain appropriate records to administer this subpart and shall transfer such records to any agency to which an employee may transfer and make such records available to any agency in which an employee may be reemployed during the same calendar year.

PART 531—PAY UNDER THE GENERAL SCHEDULE

3. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; E.O. 12748; subpart A issued under section 529 of Public Law 101-509, 104 Stat. 1427, and E.O. 12736; subpart B also issued under 5 U.S.C. 5333(a) and 5402; subpart C also issued under 5 U.S.C. 5301 and 5335; subpart E also issued under 5 U.S.C. 5336.

4. In subpart A, § 531.103(b) is amended by deleting the word "and" at the end of paragraph (b)(3), removing the period and replacing it with a

semicolon and inserting the word "and" at the end of paragraph (b)(4), and adding a new paragraph (b)(5) to read as follows:

Subpart A—Interim Geographic Adjustments

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§ 531.103 Administration of adjusted rates of pay.

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(b) * * *

(5) Advances in pay under subpart B of part 550 of this chapter.

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PART 550—PAY ADMINISTRATION (GENERAL)

5. A new subpart B is added to read as follows:

Subpart B—Advances in Pay

Sec.

- 550.201 Purpose.
- 550.202 Definitions.
- 550.203 Advances in pay.
- 550.204 Agency procedures.
- 550.205 Recovery of advances in pay.
- 550.206 Waiver of repayment.

Subpart B—Advances in Pay

Authority: 5 U.S.C. 5524a; sec. 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, 104 Stat. 1462); E.O. 12748.

§ 550.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5524a which provides that the head of each agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

§ 550.202 Definitions.

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

Employee means an individual employed in or under an agency who is appointed to a position with a scheduled tour of duty.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Newly appointed means the first appointment, regardless of tenure, as an employee of the Federal Government or a new appointment following a break in service of at least 90 days.

Offset or "setoff" means repayment in installments of an advance in pay by payroll deductions or an administrative offset under subpart K of this part to

collect a debt under 5 U.S.C. 5514 from an indebted Government employee.

Pay period means the pay period established by an agency for an employee under 5 U.S.C. 5504.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay for standby duty under 5 U.S.C. 5545(c)(1); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this subchapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509); but not including additional pay of any other kind.

§ 550.203 Advances in pay.

(a) The head of each agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any applicable allotments or deductions from pay.

(c) An advance in pay not be made to an employee before the date of the employee's appointment with the agency or after the employee has received his or her first regular pay check.

(d) An advance in pay under this subpart may not be made to any employee when an agency expects to make an advance in pay to the same employee under 5 U.S.C. 5927 within 2 pay periods after the employee's appointment.

§ 550.204 Agency procedures.

(a) Each agency shall establish written procedures governing advance payments. These procedures shall include—

(1) Criteria to be considered before approval or denial of employee requests for advance payments;

(2) Criteria to be considered before waiving all or part of advance payments; and

(3) Processing and accounting procedures governing advance payments.

(b) Before making an advance payment, an agency shall require that the employee sign an agreement to repay to the Federal Government any

amount for which repayment has not been waived by the agency head under § 550.206 of this part.

(c) Before making an advance payment, an agency shall provide the following information to the employee in writing:

(1) A statement indicating how the advance in pay will be recovered from the employee by the Federal Government, either in installments under agency procedures for payroll deductions or by salary offset procedures under Subpart K of this part;

(2) The total amount of the advance in pay, the total number of pay periods for repayment of the advance in pay, and the amount that will be deducted from the pay of the employee by payroll deductions or salary offset for each pay period;

(3) A statement indicating that the employee may prepay all or part of the balance of the advance pay not yet repaid at any time before the money is due;

(4) A statement indicating that the amount of the advance in pay not yet repaid by an employee or waived by the agency head is due and must be repaid by the employee if the employee transfers to another agency or the individual's employment with the agency is terminated for any reason; and

(5) A statement indicating that any amount of the remaining balance of the advance in pay that has not been waived or repaid by the employee on transfer or termination for any reason must be recovered by salary offset under subpart K of this part and/or by such other method as is provided by law.

(d) The head of an agency may establish procedures under which an employee is permitted to make allotments out of an advance in pay for such purposes as the head of the agency considers appropriate.

§ 550.205 Recovery of advances in pay.

(a) Unless repayment is waived in whole or in part under § 550.206 of this part, an agency shall recover an advance in pay by installments under agency procedures for payroll deductions or by salary offset procedures established under subpart K of this part. An employee may prepay all or part of the remaining balance of an advance in pay at any time before payments are due.

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 13 pay periods beginning on the date of appointment of the

employee, unless recovery is accomplished under subpart K of this part and a longer period for recovery is necessary to avoid exceeding the limitation described in § 550.1104(i) of this part.

(c) If an employee transfers to another agency or employment with an agency is terminated for any reason, the remaining balance of an advance in pay not yet repaid is due and must be repaid to the Federal Government unless repayment is waived in whole or in part under § 550.206 of this part.

(d) Any remaining balance of an advance in pay that has not been waived under § 550.206 of this part or repaid by an employee upon transfer or termination of employment must be recovered by an agency using procedures for salary offset under subpart K of this part and/or by such other method as is provided by law.

§ 550.206 Waiver of repayment.

The head of an agency may waive in whole or in part a right of recovery of an advance payment under 5 U.S.C. 5524a and this subpart if he or she determines that recovery would be against equity and good conscience or against the public interest under criteria established by the agency.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

6. A new part 575 is added to read as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

Subpart A—Recruitment Bonuses

- Sec.
- 575.101 Purpose.
 - 575.102 Delegation of authority.
 - 575.103 Definitions.
 - 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.
 - 575.105 Payment of recruitment bonus.
 - 575.106 Service agreement.
 - 575.107 Repayment of recruitment bonus.
 - 575.108 Internal evaluation.
 - 575.109 Records and reports.

Subpart B—Relocation Bonuses

- Sec.
- 575.201 Purpose.
 - 575.202 Delegation of authority.
 - 575.203 Definitions.
 - 575.204 Agency relocation bonus plans; higher level review and approval; and criteria for payment.
 - 575.205 Payment of relocation bonus.
 - 575.206 Service agreement.

- Sec.
- 575.207 Repayment of relocation bonus.
 - 575.208 Internal evaluation.
 - 575.209 Records and reports.

Subpart C—Retention Allowances

- Sec.
- 575.301 Purpose.
 - 575.302 Delegation of authority.
 - 575.303 Definitions.
 - 575.304 Conditions for payment.
 - 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.
 - 575.306 Payment of retention allowance.
 - 575.307 Reduction or termination of retention allowance.
 - 575.308 Internal evaluation.
 - 575.309 Records and reports.

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; E.O. 12748.

Subpart A—Recruitment Bonuses

§ 575.101 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of basic pay to a newly appointed employee or an individual to whom a written offer of employment has been made by the agency, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position with a high quality candidate.

§ 575.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency may pay a recruitment bonus to an employee who is newly appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332, including a position under the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383;

(4) A position as a law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17);

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a recruitment bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) When OPM finds that an agency is not paying recruitment bonuses in conformance with the agency's recruitment bonus plan and the criteria established under § 575.104 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a recruitment bonus to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a recruitment bonus to such employees.

§ 575.103 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

Employee means an employee in or under an agency who is newly appointed without time limitation or for a minimum period of 2 years or more or an individual who has received a written offer of employment without time limitation or for a minimum period of 2 years or more.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under

part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept reassignment outside the commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Newly appointed refers to the first appointment, regardless of tenure, as an employee of the Federal Government or an appointment following a break in service of at least 1 year.

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 of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Service agreement means a written agreement between an agency and a newly appointed employee under which the employee agrees to a specified period of employment of a minimum of 12 months with the appointing agency in return for payment of a recruitment bonus.

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

(a) *Agency recruitment bonus plans.*

(1) Before paying a recruitment bonus under this subpart, the head of an agency shall establish a recruitment bonus plan.

(2) A recruitment bonus plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of recruitment bonuses;

(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the amount of a bonus;

(iii) Procedures for paying bonuses;

(iv) Requirements for service agreements; and

(v) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.*

(1) Except as provided in paragraph

(b)(2) of this section, each determination

to pay a recruitment bonus, including the amount of such bonus, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria in advance based on identification of qualifications typically possessed by high quality candidates for a specific position or other similar positions and authorize the recommending official to offer a recruitment bonus (in an amount within a pre-established range) to any high quality candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position with a high quality candidate. Each such determination shall be made before the employee actually enters on duty in the position for which he or she has recruited. In determining which employee may receive a recruitment bonus, an agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) In determining whether a recruitment bonus should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) The success of recent efforts to recruit high quality 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;

(ii) Recent turnover in similar positions;

(iii) Labor-market factors that may affect the ability of the agency to recruit high quality candidates for similar positions now or in the future;

(iv) Special qualifications needed for the position; and

(v) The practicality of using the superior qualifications appointment authority provided by 5 U.S.C. 5333 and § 531.203(b) of this chapter alone or in combination with a recruitment bonus.

§ 575.105 Payment of recruitment bonus.

A recruitment bonus shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid as a lump

sum. It shall not be considered part of an employee's rate of basic pay for any purpose.

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified number of months of employment with the agency.

(b) The minimum period of employment to be established under a service agreement for a recruitment bonus shall be 12 months.

§ 575.107 Repayment of recruitment bonus.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a 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.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the appointing agency terminates before the employee completes the period of employment specified in the service agreement.

(c) Amounts owed by an employee under paragraph (a) of this section shall be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and Subpart K of Part 550 of this chapter.

(d) Paragraph (a) of this section does not apply when an employee fails to complete a period of employment established under a service agreement because the employee is involuntarily separated.

(e) A right of recovery of an employee's debt under 5 U.S.C. 5514 may be waived in whole or in part by the head of the agency if he or she determines that recovery would be against equity and good conscience or against the public interest.

§ 575.108 Internal evaluation.

(a) Each agency shall evaluate the use of recruitment bonuses to ensure that its recruitment bonus plan conforms to the requirements established under this subpart and that the payment of recruitment bonuses conforms to the criteria established under this subpart.

(b) Before January 1st of each year, each agency shall prepare a written

report on its use of recruitment bonuses during the previous fiscal year. Each report shall include the number of employees to whom a recruitment bonus was offered during the fiscal year, the percentage of salary offered, the number of employees who accepted the offer of a recruitment bonus during the fiscal year, and an evaluation of the overall effect of the payment of recruitment bonuses on the ability of the agency to fill key positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

§ 575.109 Records and reports.

(a) Each agency shall keep a record of each determination required by § 575.104(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of recruitment bonuses, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

Subpart B—Relocation Bonuses

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position with a high quality candidate.

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency may pay a relocation bonus to an employee appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332, including a position under the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383;

(4) A position as a law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17);

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a relocation bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) When OPM finds that an agency is not paying relocation bonuses in conformance with the agency's relocation bonus plan and the criteria established under § 575.204 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a relocation bonus to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a relocation bonus to such employees.

§ 575.203 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Commuting area means the geographic area that normally is considered one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and reasonably can be expected to travel back and forth daily to work.

Employee means an employee in or under an agency who is appointed without a break in service and without time limitation to a position in a different commuting area or who is serving under an appointment without time limitation and whose duty station is changed temporarily to a different commuting area.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept assignment outside the commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of a minimum of 12 months with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

§ 575.204 Agency relocation bonus plans; higher level review and approval; and criteria for payment.

(a) *Agency relocation bonus plans.* (1) Before paying a relocation bonus under this subpart, the head of an agency shall establish a relocation bonus plan.

(2) A relocation bonus plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of relocation bonuses;

(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the size of a bonus;

- (iii) Procedures for paying bonuses;
- (iv) Requirements for service agreements; and
- (v) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.* Each determination to pay a relocation bonus, including the amount of such bonus, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position with a high quality candidate. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. In determining which employee may receive a relocation bonus, an agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) In determining whether a relocation bonus should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

- (i) The success of recent efforts to recruit high quality 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;
- (ii) Recent turnover in similar positions;
- (iii) Labor-market factors that may affect the ability of the agency to recruit high quality candidates for similar positions now or in the future; and
- (iv) Special qualifications needed for the position.

§ 575.205 Payment of relocation bonus.

(a) A relocation bonus shall be calculated as a percentage of the employee's rate of basic pay and paid as a lump sum. Except as provided in paragraph (b) of this section, the amount of a relocation bonus may not exceed 25 percent of the employee's rate of basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) In the case of a law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17) with respect to whom the provisions of chapter 51 of

title 5, United States Code, apply, the amount of a relocation bonus may not exceed the greater of \$15,000 or 25 percent of the officer's rate of basic pay.

§ 575.206 Service agreement.

(a) Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified number of months of employment with the agency at the new duty station.

(b) Except as provided in paragraph (c) of this section, the minimum period of employment to be established under a service agreement for a relocation bonus shall be 12 months.

(c) In the case of a temporary change in duty station for less than 12 months, a service agreement may provide for a shorter minimum period of employment. Any determination made under this paragraph shall be documented in writing and shall include a description of the reasons for the determination.

§ 575.207 Repayment of relocation bonus.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement shall be indebted to the Federal Government and shall repay the relocation 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.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the agency at the new duty station terminates before the employee completes the period of employment specified in the service agreement.

(c) Amounts owed by an employee under paragraph (a) of this section shall be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and subpart K of part 550 of this chapter.

(d) Paragraph (a) of this section does not apply when an employee fails to complete the period of employment established under a service agreement because the employee is involuntarily separated or because of a written determination by the head of the agency that it is necessary to relocate the employee to a position in a different commuting area.

(e) A right of recovery of an employee's debt under 5 U.S.C. 5514 may be waived in whole or in part by the head of the agency if he or she determines that recovery would be

against equity and good conscience or against the public interest.

§ 575.208 Internal evaluation.

(a) Each agency shall evaluate the use of relocation bonuses to ensure that its relocation bonus plan conforms to the requirements established under this subpart and that the payment of relocation bonuses conforms to the criteria established under this subpart.

(b) Before January 1st of each year, each agency shall prepare a written report on its use of relocation bonuses during the previous fiscal year. Each report shall include the number of employees who received a relocation bonus during the fiscal year, the percentage of salary received by each employee, and an evaluation of the overall effect of the payment of relocation bonuses on the ability of the agency to fill key positions with high quality candidates and foster geographic mobility among high quality candidates within the agency. Each agency shall make its annual report available for review upon request by OPM.

§ 575.209 Records and reports.

(a) Each agency shall keep a record of each determination required by § 575.204(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of relocation bonuses, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

Subpart C—Retention Allowances.

§ 575.301 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5754, which authorizes payment of a retention allowance of up to 25 percent of basic pay to a current employee if the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and the agency determines that the employee would be likely to leave in the absence of a retention allowance.

§ 575.302 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency

may pay a retention allowance to an employee who holds—

(1) A General Schedule position paid under 5 U.S.C. 5332, including a position under the Performance Management and Recognition System established under chapter 54 of title 5, United States Code;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383;

(4) A position as a law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17);

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule; or

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a retention allowance to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(c) When OPM finds that an agency is not paying recruitment bonuses in conformance with the agency's retention allowance plan and the criteria established under § 575.305 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a retention allowance to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a retention allowance to such employees.

§ 575.303 Definitions.

In this subpart *AGENCY* has the meaning given that term in 5 U.S.C. 5102.

Employee means an employee in or under an agency who is serving under an appointment without time limitation.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

§ 575.304 Conditions for payment.

(a) An agency may pay a retention allowance to an employee only if the employee has completed 1 year of continuous service with the agency immediately prior to such payment, if applicable, a period of employment established under the service agreement required for payment of a recruitment bonus under Subpart A of this part or a relocation bonus under Subpart B of this part, whichever occurs later.

(b) An agency may pay a retention allowance to an employee only if the employee is likely to leave the Federal service for employment outside the executive, legislative, or judicial branch of the Federal Government.

(c) An agency may not pay a retention allowance to an employee who is likely to leave his or her position for employment in the executive, legislative, or judicial branch of the Federal Government, whether in the same or a different agency.

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

(a) *Agency retention allowance plans.* (1) Before paying a retention allowance under this subpart, the head of an agency shall establish a retention allowance plan.

(2) A retention allowance plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of retention allowances;

(ii) Criteria that must be met or considered in authorizing allowances, including criteria for determining the size of an allowance;

(iii) Procedures for paying allowance; and

(iv) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.* Each determination to pay a retention allowance, including the amount of such allowance, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) *Criteria for payment.* (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service for employment outside the executive, legislative, or judicial branch of the Federal Government.

(2) The determination required by paragraph (c)(1) of this section shall be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission.

(3) In determining whether a retention allowance should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) 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; and

(ii) The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee.

§ 575.306 Payment of retention allowance.

(a) A retention allowance shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid in the same manner and at the same time as basic pay—i.e., the allowance shall be paid at an hourly rate for each hour during which the employee receives basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The head of an agency may not authorize a retention allowance for an employee if or to the extent that such an allowance, when added to the annual rate of all other continuing payments (as defined in § 530.202 of this part) to which the employee is then entitled, would cause the annual rate of all continuing payments to exceed the rate then payable for level I of the Executive Schedule.

(c) Except as provided in § 575.307(a) of this part, an agency may continue payment of a retention allowance as long as the conditions giving rise to the

original determination to pay the allowance still exist. However, at least annually, each determination to pay an allowance shall be reviewed by the agency to determine whether the payment is still warranted, and this determination shall be certified in writing by the approving official.

§ 575.307 Reduction or termination of retention allowance.

(a) At the time of an increase in one or more nondiscretionary continuing payments to an employee, the agency shall reduce the amount of a retention allowance to the extent necessary to ensure that the annual rate of all continuing payments (as defined in § 530.202 of this part) to which the employee is then entitled does not exceed the rate then payable for level I of the Executive Schedule.

(b) The head of an agency may reduce or terminate payment of a retention allowance when it determines that—

(1) A lesser amount (or none at all) would be sufficient to retain the employee;

(2) Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee;

(3) The agency'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); or

(4) Budgetary considerations make it difficult to continue payment at the level originally approved (or at all).

(c) The reduction or termination of a retention allowance may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or any of the laws referred to in 5 U.S.C. 2302(d).

§ 575.308 Internal evaluation.

(a) Each agency shall evaluate the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

(b) Before January 1st of each year, each agency shall prepare a written report on its use of retention allowances during the previous fiscal year. Each report shall include the number of employees who received a retention allowance during the fiscal year, the percentage of salary received by each employee, and an evaluation of the overall effect of the payment of retention allowances on the ability of the agency to retain high quality

employees in key positions. Each agency shall make its annual report available for review upon request by OPM.

§ 575.309 Records and reports.

(a) Each agency shall keep a record of each determination required by section 575.305(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of retention allowances, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, and 285

[Amdt. No. 330]

Food Stamp Program; Food Stamp Application and Income Exclusion Provisions of the 1990 Farm Bill

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: This action amends Food Stamp Program (FSP) regulations to implement several provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII, Pub. L. 101-624, enacted November 28, 1990.) These provisions simplify FSP application requirements and exclude certain public assistance (PA) clothing allowances and general assistance (GA) vendor payments from being counted as income.

DATES: The provisions of this action are effective and must be implemented on August 1, 1991. Comments must be received on or before June 26, 1991, to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park

Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address, telephone (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512-1. The Department has classified this action as nonmajor. The rule's effect on the economy will be less than \$100 million, and it will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice of 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect food stamp applicants and recipients and the State and local agencies that administer the Program. The application process will be simplified, and some currently participating households will realize an increase in Program benefits.

Paperwork Reduction Act

The requirement of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) that applicants for food stamps attest to their alien or citizenship status was implemented in regulations issued October 7, 1988 (53 FR 39433). At that time, the Office of Management and Budget (OMB) approved the signature