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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 575

RIN 3206-AF10

Pay Under the General Schedule; Supervisory Differentials

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations authorizing agencies to pay supervisory differentials under the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final rule allows the head of an agency to pay a differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule who, in the absence of such a differential, would be paid more than the supervisory employee.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 211 of FEPCA (Pub. L. 101-509, November 5, 1990) replaces the previous authority, 5 U.S.C. 5333(b), to adjust the pay of a General Schedule (GS) employee who supervises one or more prevailing rate employees. The new authority, 5 U.S.C. 5755, applies to a GS employee who has supervisory responsibility for one or more employees not under the General Schedule.

On May 3, 1991, (56 FR 20336) OPM published interim regulations on supervisory differentials authorized by section 211 of FEPCA. The 60-day comment period ended on July 2, 1991. Comments were received from three agencies and one individual. Comments,

as well as certain modifications of the interim regulations, are summarized below.

Supervisory Responsibility

Section 575.402(a)(2) of the interim regulations provides that a supervisor must be responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule in order to be eligible for a supervisory differential. One agency commented that it would like to have the flexibility to pay a supervisory differential to all supervisors in a technical supervisory role above prevailing rate (wage) employees, since, unlike the previous authority, supervisory differentials under 5 U.S.C. 5755 are not part of the basic pay of an employee. OPM has not amended § 575.402(a)(2) in this regard, since most agencies were satisfied with the existing criteria.

Part-time Supervisors

An individual asked whether a part-time GS supervisor could receive a supervisory differential on the basis of a comparison of his or her part-time salary with the full-time salary of a non-GS subordinate. Calculations of the continuing pay of both the supervisor and the subordinate must be made on an annual basis for the purpose of all comparisons required by these regulations, without regard to whether the supervisor and/or subordinate is part-time or full-time. A new paragraph (e) has been added to § 575.405 to clarify this matter.

Time Limit for Adjustment or Termination

Section 575.406(d) of the interim regulations requires that the effective date of a reduction or termination of a supervisory differential be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs. One agency commented that this requirement is impractical, because its data system does not link the pay of the supervisor and subordinate, and suggested that the time period be extended to 60 days.

Under 5 U.S.C. 5755(b)(1), a supervisory differential may not cause the supervisory employee's pay to exceed the pay of the highest paid subordinate employee by more than 3 percent. The effective date of a

reduction or termination of a supervisory differential could be established on the same date as the effective date of the event necessitating the reduction or termination—e.g., the effective date of a decrease in a subordinate's pay or of an increase in the supervisor's pay. However, in order to allow the adjustment or termination to be effective on the first day of a pay period, the regulations provide 30 calendar days as a reasonable time period within which to establish an effective date.

OPM cannot justify extending this time period to 60 days. Agencies should adjust their data systems to incorporate this requirement. Should an agency be unable to process such an action within 30 calendar days, an employee receiving an overpayment must reimburse the agency for payment(s) made beyond the effective date. Therefore, if an agency determines that these actions might not be processed within 30 calendar days, it should inform supervisory employees, before paying the differential, that the effective date of any adjustment necessitated by this provision will be within 30 calendar days after the date on which the event that necessitates the reduction or termination occurs and that appropriate repayment by the employee will be required when the reduction or termination is processed.

Appeal Rights

An agency requested clarification of appeal rights concerning the reduction or termination of a supervisory differential. Section 575.406(f) of the interim regulations reflects the statutory provisions that the reduction or termination of a supervisory differential may not be appealed and that this does not extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any law referred to in 5 U.S.C. 2302(d).

The provisions in subchapter II of chapter 12 of title 5, United States Code, cover the authority of the Office of Special Counsel of the Merit Systems Protection Board regarding prohibited personnel practices, disclosures of violations of law, gross mismanagement, gross waste of funds, abuse of authority, substantial and specific danger to public health or safety, and other matters. The provisions of 5 U.S.C. 2302(d) relate to equal employment opportunity through

affirmative action and to rights of employees or applicants for employment in the civil service regarding prohibition of discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.

Since the authority to pay a supervisory differential is discretionary, § 575.406(a) of the interim regulations provides that an agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so. Although such an adjustment or termination may not in itself be appealed to the Merit Systems Protection Board, an employee exercising his or her appeal rights under subchapter II of chapter 12 or 5 U.S.C. 2302(d) is not barred from claiming that the adjustment or termination of the supervisory differential is linked to the prohibited personnel practice or practices that form the basis for the appeal. The final regulations have not modified § 575.406(f) in this regard.

Miscellaneous

Section 575.402(a)(2) of the interim regulations has been revised to clarify that for purposes of comparing the pay of a supervisor and subordinate, continuing pay should be used. Sections 575.402(b) and 575.405(d)(2) have been revised to include a reference to a special law enforcement adjusted rate of pay under section 404 of FEPCA, since this pay is treated in the same manner as a locality-based comparability payment or an interim geographic adjustment in determining the amount of a supervisory differential. Sections 575.403 and 575.405(c)(2) were revised by the final rule for Special Pay Adjustments for Law Enforcement Officers in Selected Cities published on January 22, 1992, at 57 FR 2431, to include a reference to a special law enforcement adjusted rate of pay. Section 575.402(b) has been revised to clarify that in determining a supervisor's eligibility for payment of a supervisory differential, the maximum dollar amount of the subordinate's continuing pay may not exceed the maximum rate for GS-15 on the pay schedule applicable to the supervisor, regardless of the supervisor's grade level. Finally, a typographical error has been corrected in § 575.406(f).

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 employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Wages.
U.S. Office of Personnel Management.
Douglas A. Brook,
Acting Director.

Accordingly, OPM's interim regulations under parts 531 and 575 published on May 3, 1991, at 56 FR 20336, as amended by final rules published on January 22, 1992, at 57 FR 2431, are adopted as final with the following changes:

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

1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104 (a) (2), 5753, 5754, and 5755; sec. 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466; E.O. 12748.

2. In § 575.402, paragraphs (a) (2) and (b) are revised to read as follows:

§ 575.402 Delegation of authority.

(a) * * *

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable locality-based comparability payment under 5 U.S.C. 5304; an interim geographic adjustment or special law enforcement adjusted rate of pay under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; or a schedule for any applicable special rate of pay under 5 U.S.C. 5305.

3. In § 575.405, paragraph (d)(2) is revised; paragraphs (e) and (f) are redesignated as paragraphs (f) and (g).

respectively; and a new paragraph (e) is added to read as follows:

§ 575.405 Calculation and payment of supervisory differential.

(d) * * *

(2) A locality-based comparability payment under 5 U.S.C. 5304; an interim geographic adjustment or special law enforcement adjusted rate of pay under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; or another locality-based payment under similar authority;

(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

4. In § 575.406, the first sentence of paragraph (f) is revised to read as follows:

§ 575.406 Adjustment or termination of supervisory differential.

(f) The reduction or termination of a supervisory differential may not be appealed. * * *

[FR Doc. 92-19616 Filed 8-18-92; 8:45 am]
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5 CFR Part 575

RIN 3206-AE35

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules to authorize the payment of recruitment and relocation bonuses and retention allowances under the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final regulations revise the interim regulations by (1) providing an exception to case-by-case determinations to pay relocation bonuses when it is necessary for an agency to promote mobility or when a function is transferred to another commuting area; (2) allowing payment of relocation bonuses and retention allowances to employees on temporary appointments of at least 2 years; (3) requiring an employee to establish a residence in the new commuting area in order to receive a relocation bonus; (4) removing the 1-year break in service

requirement for recruitment bonuses for certain former students; and (5) establishing procedures for requesting authority to pay recruitment and relocation bonuses and retention allowances to employees not otherwise covered by sections 5753 and 5754 of title 5, United States Code, and these regulations.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606-2858.

SUPPLEMENTARY INFORMATION: On March 28, 1991, the Office of Personnel Management (OPM) published interim regulations to authorize the payment of recruitment and relocation bonuses and retention allowances in the *Federal Register* (56 FR 12833). The 60-day public comment period ended on May 28, 1991. OPM received comments from 14 agencies and 1 labor organization. The comments are summarized below, along with a description of the changes in, or clarifications of, the interim regulations that have been adopted.

General Comment

One agency commented that, although recruitment and relocation bonuses and retention allowances will assist Federal agencies in recruiting and retaining qualified staff, the unique pay comparability problems faced by some agencies that must compete for employees with highly specialized skills that exist in a highly-compensated sector of the labor market will not be eliminated through the implementation of these flexibilities alone. OPM is aware that there always will be some markets in which Federal agencies cannot compete for high quality employees on precisely equal terms with employers in the private sector. Nevertheless, the flexibilities provided by FEPCA, including recruitment and relocation bonuses and retention allowances, provide managers with many new tools to build and maintain a quality work force. OPM plans to issue additional guidance to agencies on using these flexibilities effectively and efficiently.

Documentation and Reporting Requirements

One agency judged the documentation requirements to be so excessive that they reduce the benefits of the authorities. Another agency indicated that the reporting requirements would prevent certain agencies from taking advantage of the authorities because of the requirement to reveal, in some cases, sensitive or classified information. OPM is sensitive to agencies' concerns that unnecessary record-keeping

requirements be avoided. However, since the authorities to pay recruitment and relocation bonuses and retention allowances are new, it will not be possible, without adequate documentation, to assess their usefulness and cost or to ensure that they are administered equitably. Nevertheless, OPM will not require agencies to divulge information protected from disclosure by statute or otherwise require agencies to disclose classified information inappropriately. Such agencies will not be prevented from paying recruitment and relocation bonuses or retention allowances.

The labor organization and two agencies suggested that justifying a recruitment and relocation bonus on the basis of difficulty in filling a position with a "high quality" candidate imposes an additional requirement not supported by the statute. The term "high quality" does not impose an additional requirement not contemplated by Congress. Rather, it reinforces Congress' clearly expressed concern about the quality of new candidates for Federal service. The conference report on FEPCA (House Report 101-906, October 20, 1990, page 87) clearly demonstrates this concern by pointing out the greater costs Americans will suffer "when the Federal Government is unable to attract and retain those dedicated workers necessary to the delivery of services to all citizens."

Consistent with the conference report, therefore, OPM has promulgated regulations that protect merit principles and, at the same time, ensure that managers use resources judiciously to recruit and retain candidates of high quality to accomplish the agency's mission. OPM has retained the regulation permitting payment of a bonus only when it would be difficult to fill a position with a high quality candidate.

The interim regulations concerning internal evaluation of recruitment and relocation bonuses and retention allowances require agencies to evaluate the usefulness of bonuses and/or allowances in filling "key positions." One agency pointed out that the term "key position" is not used elsewhere in the regulations and questioned the need for a new, undefined term. The final regulations require agencies to evaluate the usefulness of bonuses and allowances in filling "positions."

Comments on the Requirement for Making Case-By-Case Determinations To Pay Bonuses and Allowances

The interim regulations require that decisions to pay an employee a bonus or an allowance be made and documented

on a case-by-case basis. A labor organization suggested that case-by-case determinations could lead to inequitable treatment of employees and agreed with the approach suggested by two agencies that agencies be given the authority to pay similar bonuses to employees in similar situations without making case-by-case determinations. An agency argued that an agency should be allowed to use these authorities based on a manager's perception of need for an individual's services and an organization's budgetary constraints, as opposed to difficulty in filling a position, without higher level approval. OPM believes the requirement for case-by-case determinations, except in unusual circumstances, is necessary to prevent any possibility of abuse. The final regulations, like the interim regulations, allow payment of recruitment bonuses without case-by-case approval at a higher level when it is necessary to make a timely offer of employment. When such offers are made, a higher level agency official may establish criteria in advance based on 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).

Comments on Rules Concerning Relocation Bonuses

Similar concerns about the need for case-by-case determinations to pay relocation bonuses were raised by two agencies. They concluded that this requirement would diminish their ability to promote mobility and build a flexible work force. The agencies suggested establishing a policy to pay a relocation bonus to any employee who must move to a high cost area or move as a result of transfer of function without additional documentation. In response to these concerns, the final regulations provide that an agency may request OPM approval of an exception to the requirement for case-by-case approval for payment of relocation bonuses to enhance the agency's ability to retain high quality employees (1) who are subject to mobility agreements, or (2) whose function is transferred to another commuting area.

Two agencies employing law enforcement officers objected to the provision permitting payment of a relocation bonus only when the position would otherwise be difficult to fill. Citing section 407 of FEPCA, which provides relocation payments of up to \$15,000 to law enforcement officers whose annual rates of basic pay are less

than \$60,000, one agency indicated that a requirement that the position be difficult to fill was too restrictive and that it was not the intent of Congress to link the payment of relocation bonuses to law enforcement officers to any condition other than the necessity to maintain a flexible and mobile work force. Section 407 of FEPCA provides that a law enforcement officer whose rate of basic pay is less than \$60,000 may receive a relocation payment of up to \$15,000 under section 5753. Therefore, while section 407 clearly authorizes payment of a more generous relocation bonus for certain law enforcement officers, the requirement that the position be difficult to fill applies to law enforcement officers, as well as other employees covered by 5 U.S.C. 5753 and 5754.

The labor organization suggested that the agency's need for an employee at the full performance level be among the factors used to determine whether to pay a relocation bonus. We have not adopted this suggestion. A decision about the level at which a position should be filled reasonably should be made before the vacancy is posted—far in advance of the need to consider offering a relocation bonus.

An agency noted that although the interim regulations bar payment of relocation bonuses to employees with time-limited appointments, recruitment bonuses can be paid to employees with appointments of at least 2 years. The agency suggested that the same rule should apply in the case of relocation bonuses. The final regulations allow employees with appointments of at least 2 years to be paid relocation bonuses or retention allowances.

An agency asked OPM to clarify the rate of basic pay to use as a basis for calculating a relocation bonus when an employee is on grade or pay retention. The interim regulations provide that an employee may receive a relocation bonus of up to 25 percent of the rate of pay fixed by law or administrative action for the position to which the employee is being relocated. For an employee on grade or pay retention, the amount of the allowance is based on the employee's retained rate of pay. OPM has revised the final regulations on relocation bonuses and retention allowances to clarify the basis for calculating the amount of such a bonus or allowance.

An agency suggested that the interim regulations were unclear about whether a relocation bonus could be paid to an employee who was transferring between agencies to a position in a different commuting area. Since the definition of employee in § 575.201 of the interim

regulations is not limited to an employee of the agency paying the bonus, but allows a bonus to be paid to an employee in or under an agency transferring to a position in a different commuting area, OPM does not believe further clarification is necessary.

An agency inquired as to whether a relocation bonus could be paid to an employee as an incentive to remain in a position when the position was relocated out of the commuting area and the employee's commuting distance increased substantially, but the employee chose for personal reasons to commute, rather than relocate to the new commuting area. Payment of a relocation bonus under these conditions would not be consistent with the intent of the law. To receive a relocation bonus, an employee need not physically move his or her family, household goods, etc., from the "old" commuting area; however, the employee must establish a residence (e.g., rent an apartment) in the "new" commuting area. Therefore, the final regulations require that the employee establish a residence before the bonus may be paid. Additional guidance on this topic will be provided through the Federal Personnel Manual system.

Comments on Rules Concerning Recruitment Bonuses

For a variety of reasons, four agencies opposed the restriction on the payment of recruitment bonuses to employees who have not had a break in service of at least 1 year. One agency said the break-in-service restriction should parallel the 90-day break-in-service restriction on making superior qualifications appointments. Three agencies said the 1-year restriction would damage college recruitment programs by (1) preventing recruiters from offering bonuses to students who have had temporary appointments during previous school vacations or law clerk trainees appointed under 5 CFR 213.3102(e) pending admission to the bar, and (2) limiting an agency's ability to convert co-op students appointed under 5 CFR 213.3202 to career-conditional appointments. Another agency objected to the restriction because it bars the payment of bonuses to experts and consultants. Finally, an agency noted that the break-in-service requirement prevents employees serving under temporary appointments—especially those pending completion of the competitive examining process—from receiving bonuses.

OPM has not reduced the length of the break-in-service requirement for eligibility to receive a recruitment bonus, nor are exceptions provided for

non-student temporary appointments or experts and consultants. Although a superior qualifications appointment may result in an employee receiving a greater long-term entitlement, its use does not share the same potential for abuse that is possible with the recruitment bonus, where a short break-in-service requirement might encourage an employee to resign for a short period in order to receive a large lump-sum bonus. The required year-long break in service is intended to minimize this possibility. In addition, the fact that a candidate accepts employment at the outset without a bonus indicates that it was not necessary to offer a recruitment incentive. However, we agree that, in some situations, this restriction may interfere with an agency's ability to recruit high quality candidates in whom it has invested substantial resources. Therefore, we have provided exceptions to allow the payment of recruitment bonuses to co-op students, former students with prior Federal summer or vacation employment who are receiving their first permanent appointment, and law clerk trainees.

Comments Concerning Service Agreements and Repayment of Bonuses

A prospective employee may be paid a recruitment bonus before he or she actually enters on duty. An agency commented that it would be difficult to recoup a bonus if, after receiving the bonus, the employee did not enter on duty. Although the agency's concern is a legitimate one, the statute allows this flexibility, and it may be especially useful in attracting entry-level employees. Therefore, agencies should pay a recruitment bonus before an individual actually enters on duty only in rare instances where unusual circumstances warrant accepting the risk that the agency may have difficulty recouping the bonus. Nevertheless, it is possible that an agency also could have difficulty recouping a recruitment bonus if an employee were to remain on board for a very short period before leaving for non-federal employment. OPM believes that, by signing a service agreement before receiving a recruitment bonus, the individual recognizes that a legal obligation has been established. If the individual does not honor the obligation, there are procedures for agencies to collect bona fide debts.

One agency suggested that the period of employment required by a service agreement for a recruitment or relocation bonus should begin after the completion of the period of employment required by a service agreement for any other benefit, such as training. Bonuses

are intended to assist agencies in recruiting and relocating employees, while service agreements are intended to ensure that the employee remains in the position for a reasonable period. Consecutive agreements could be a disincentive to an employee, or prospective employee, because of the lengthy period he or she would be required to remain in one location or employed with one agency or organization. Therefore, OPM has not adopted this change.

The labor organization noted that the interim regulations establish a minimum period of employment under a service agreement, but do not establish a maximum period or provide criteria to assist agencies in establishing a maximum period. The labor organization commented that, in order to receive a relatively small bonus, an employee may be required to sign an unreasonably long service agreement and suggested that the length of the service agreement should be linked to the percentage of basic pay used to calculate the amount of the bonus. OPM believes the percentage of the bonus and the length of the service agreement are best resolved by mutual agreement between the employee and the agency involved. Therefore, OPM has not established a maximum period for service agreements.

The labor organization also questioned the need to complete a service agreement with the appointing agency, arguing that if the employee were forced to move to a different agency because of a transfer of function, he or she would be required to repay the bonus. In response to this concern, OPM has revised the final regulations to make clear that repayment of a bonus will not be required under these circumstances.

One agency disagreed with the requirement that an employee receiving a relocation bonus agree to remain at the new duty station for a specified time period. The agency feels that the requirement discourages mobility. OPM believes that the provision in § 575.207(d) of the interim regulations that removes the requirement to repay a bonus when it is necessary to relocate an employee to a position in a different commuting area will allow agencies to foster mobility.

Several agencies have informally raised the issue as to whether, in large organizations, an employee should be required to remain with the "employing activity" for the duration of the agreement. The statute provides that an employee must agree to complete a period of employment with the "agency." OPM does not believe an additional requirement that the

employee remain with a subcomponent of an agency would be consistent with the statute.

The labor organization and an agency believe that an employee should be considered involuntarily separated for purposes of repaying a recruitment or relocation bonus if, after becoming subject to a written mobility agreement, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment. OPM did not adopt any change in the final regulations. An employee who accepts a mobility requirement by accepting a reassignment outside the commuting area should be treated like any other employee subject to a mobility agreement. This provision parallels the definition of involuntary separation in the severance pay regulations (5 CFR 550.703).

Typically, recruitment bonuses will be paid to new Federal employees who must serve probationary periods. During the probationary period an employee has no appeal rights to challenge his or her removal from employment. Under these circumstances, the labor organization maintained that requiring an employee to return a bonus would constitute an improper "fine" or "penalty." It is not the intent of FEPCA to extend to probationers any additional due process rights beyond those they already have. In addition, OPM believes that the provision permitting the payment of a recruitment bonus only to a high quality employee in a difficult to fill position will provide an adequate safeguard against the arbitrary termination of an employee during his or her probationary period.

When an employee fails to complete a period of employment established under a service agreement and must repay a recruitment or relocation bonus, the interim regulations require the employee to repay the bonus on a pro rata basis. The employee receives credit for each full month of employment completed under the service agreement. The labor organization objected to this formula, preferring that service be credited by rounding to the nearest full month or that it be credited on a partial month basis. OPM declines to accept this recommendation because of the administrative complexity of crediting less than a full month of service toward the completion of a service agreement. Also, OPM believes the formula is appropriate because it encourages employees to complete more rather than less service under the agreement.

Comments on Retention Allowances

One agency suggested that payment of a retention allowance be permitted when an employee would otherwise move to another Federal agency. OPM declines to make this change because paying a retention allowance to prevent an employee from transferring to another Federal agency would encourage agencies to compete with one another for an employee's services.

Two agencies proposed that, in order to receive a retention allowance, an employee must have a firm offer of employment outside the Federal service. Although a firm offer of employment may be a prime indicator that an employee is likely to leave the Federal service, OPM does not believe that it is necessary or desirable to specify the exact type of documentation necessary to approve the payment of such an allowance.

One agency suggested that OPM establish rules to recoup a retention allowance when the allowance was paid under fraudulent circumstances. Agencies may establish criteria to authenticate offers of employment outside the Federal Government. However, if an employee falsifies such an offer, we believe the existing mechanisms for recouping losses incurred through fraudulent means are adequate to recover any portion of a retention allowance paid under such circumstances.

The labor organization voiced concerns about the potential abuse of the retention allowance authority and about the relationship between retention allowances and the requirement for substantially equal pay for equal work in 5 U.S.C. 5101(1)(A). To ensure that employees are equitably treated and paid, the labor organization recommended that OPM establish objective definitions of the phrases (1) "unusually high or unique qualifications," (2) "special need for an employee's services," and (3) "would be likely to leave in the absence of a retention bonus." OPM believes the criteria for the payment of retention allowances should be clearly defined by each agency, taking into account unique factors such as the agency's mission and organizational characteristics. OPM does not believe that it would be practical or useful to attempt to prescribe such definitions by regulation.

Finally, the regulations have been amended to establish procedures under which the head of an Executive agency may request authority to pay such bonuses and allowances to employees not otherwise covered by sections 5753

and 5754 of title 5, United States Code, and to make certain technical and conforming changes, including the addition of a requirement that agencies track and report on the number of relocation bonuses and retention allowances offered to employees during a fiscal year. Under the interim regulations, agencies were required to report only the number of recruitment bonuses offered each fiscal year.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal agencies and Federal employees.

List of Subjects in 5 CFR Part 575

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the interim rule establishing 5 CFR part 575, which was published at 56 FR 12833 on March 28, 1991, is adopted as final with the following changes:

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

1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. In § 575.102, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 575.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a recruitment bonus to an employee who is newly appointed to—

(c) The head of an Executive agency may request that OPM authorize the payment of a recruitment bonus to one or more categories of employees of his

or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

3. In § 575.103, the definitions of the terms *employee*, *newly appointed*, and *rate of basic pay* are revised to read as follows:

§ 575.103 Definitions.

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

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) An appointment following a break in service of at least 1 year; or

(c) A permanent appointment received within 1 year after termination of—

(1) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter;

(2) Employment under the Stay-in-School program, in accordance with § 213.3102(w) of this chapter;

(3) Employment as a law clerk trainee under § 213.3102(e) of this chapter; or

(4) Employment while a student during school vacations under a short-term temporary appointing authority.

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 or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively.

4. In § 575.106, paragraph (a) is revised to read as follows:

§ 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 appointing agency (or successor agency in the event of a transfer of function).

5. In § 575.108, paragraph (b) is revised to read as follows:

§ 575.108 Internal evaluation.

(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 positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

6. In § 575.202, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a relocation bonus to an employee appointed to—

(c) The head of an Executive agency may request that OPM authorize the payment of a relocation bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

7. In § 575.203, the definitions of the terms *employee* and *rate of basic pay* are revised to read as follows:

§ 575.203 Definitions.

Employee means an employee in or under an agency who is appointed without a break in service and without time limitation or for a minimum period of at least 2 years to a position in a different commuting area or an employee who is serving under an appointment without time limitation or for a minimum period of at least 2 years and whose duty station is changed temporarily to a different commuting area.

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 or, in the case of an employee who is entitled to grade or pay retention, the employee's

retained rate of pay, 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 or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively.

8. In § 575.204, the section heading and paragraphs (b) and (c)(1) are revised, and a new paragraph (d) is added to read as follows:

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

(b) *Higher level review and approval.* Except as provided in paragraph (d) of this section, 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, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(d) *Exceptions to case-by-case approval.* With the prior approval of OPM, the head of an agency may authorize, for a specified period of time, the payment of a relocation bonus to any employee whose rating of record is at least fully successful without the requirement for case-by-case approval when—

(1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of an agency, in consultation with OPM, determines that relocation bonuses are necessary to ensure the agency's ability to retain high quality employees subject to such an agreement; or

(2) A major organizational unit of an agency is relocated to a different commuting area, and the head of an agency, in consultation with OPM, determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

9. In § 575.205, paragraph (c) is added to read as follows:

§ 575.205 Payment of relocation bonus.

(c) Before a relocation bonus may be paid to an employee, the employee must establish a residence in the new commuting area.

10. In § 575.206, paragraph (a) is revised to read as follows:

§ 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 appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

11. In § 575.208, paragraph (b) is revised to read as follows:

§ 575.208 Internal evaluation.

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

12. In § 575.302, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and the introductory language of paragraph (d) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an

Executive agency) may pay a retention allowance to an employee who holds—

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to an employee of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

(d) When OPM finds that an agency is not paying retention allowances 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—

13. In § 575.303, the definitions of the terms *employee* and *rate of basic pay* are revised to read as follows:

§ 575.303 Definitions.

Employee means an employee in or under an agency who is serving under an appointment without time limitation or for a minimum period of at least 2 years.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, 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 or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively.

14. In § 575.308, paragraph (b) is revised to read as follows:

§ 575.308 Internal evaluation.

(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 to whom a retention allowance was offered, the percentage of salary received by each employee, the number of employees who accepted the offer of a retention allowance, and an evaluation of the overall effect of the payment of retention allowances on the ability of the agency to retain high quality employees. Each agency shall

make its annual report available for review upon request by OPM.

[FR Doc. 92-19617 Filed 8-18-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1941

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Farmers Home Administration (FmHA) corrects an interim rule published September 14, 1988, in the *Federal Register* (53 FR 35638-35798) on certain provisions of the Agricultural Credit Act of 1987 and additional amendments of portions of the FmHA regulations. Portions of this interim rule were adopted unchanged as a final rule on May 25, 1990, (55 FR 21517-21533). Unfortunately an error in this unchanged portion was not discovered at that time. The intent of this action is to correct that typographical error.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Boyles, Farmer Programs Loan Making Division, Farmers Home Administration, U.S. Department of Agriculture, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720-1360.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is corrected by making the following technical amendment:

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.18 [Amended]

2. Section 1941.18(b)(3) is amended by changing the word "rescheduled" to "scheduled."

Dated: July 16, 1992.

La Verne Ausman,
Administrator, Farmers Home
Administration.

[FR Doc. 92-19681 Filed 8-18-92; 8:45 am]

BILLING CODE 3410-07-M

RESOLUTION TRUST CORPORATION

Office of Inspector General

12 CFR Part 1680

Privacy Act Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Notice of interim rulemaking with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC or Corporation) Office of Inspector General (OIG) is adopting an interim rule for the processing of requests for access to or amendment of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act). Also, RTC OIG is exempting a new system of records from certain provisions of the Privacy Act to the extent the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records, entitled "Office of Inspector General Investigative Files," includes OIG's investigative files. This new system of records appears in an accompanying notice.

DATES: This interim rule is effective August 19, 1992. Comments must be received by October 19, 1992.

ADDRESSES: Comments must be sent to: Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, room 1122, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Senior Assistant Counsel to the Inspector General, at 703-908-7812.

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Background

On December 23, 1991, the Board of Directors of the Resolution Trust Corporation adopted a Resolution authorizing the Inspector General to promulgate policies and regulations necessary to administer OIG records pursuant to the Privacy Act of 1974. The Resolution also recognized the authority of the Secretary of the Corporation to authorize release of Corporation documents not developed by OIG which are contained in OIG files. This rule sets forth the procedures to be used in

requesting records from RTC OIG, the procedures for contesting the content of records, and the identification of systems of records that are exempt from the access, amendment, and disclosure accounting provisions of the Privacy Act. Also a new Privacy Act system of records is being established. The system, entitled Office of Inspector General Investigative Files, contains investigatory material compiled for law enforcement purposes and investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. A separate regulation implements the Privacy Act for non-OIG RTC systems of records.

B. Requests for Information in Records

The rule provides that all written requests for records under the control of the Inspector General of RTC should be sent to the OIG in Rosslyn, VA. It further permits individuals to appear in person at OIG Headquarters, in Rosslyn, VA, to inspect non-exempt records pertaining to themselves which are covered by the Privacy Act. Requests for records must reasonably describe the record desired. The rule also provides for adequate identification to be submitted for both written and oral requests.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General and Regional Inspectors General for Audit, if the inquiry involves an audit issued in the Region, authority to make initial determinations concerning requests for access to or amendment of records. It should be noted that at the present time there are no audit systems of records subject to the Privacy Act, but regulatory provision is being made should the need for such a system arise in the future. The concurrence of the Secretary is required for initial determinations concerning requests for access to or amendment of records involving Corporation documents not developed by OIG but which are contained in OIG files. Final decisions on an appeal of an initial denial of access or a determination not to amend will be made by the Inspector General or Deputy Inspector General for records under the control of the OIG with the concurrence of the General Counsel with respect to Corporation documents not developed by OIG.