

§ 575.203

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is relocated before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of not more than 4 years with the agency at the new duty station to which relocated in return for payment of a relocation incentive.

[70 FR 25743, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

§ 575.203 Eligible categories of employees.

(a) Except as provided in § 575.204, an Executive agency may pay a relocation incentive to an employee in the following categories of positions:

(1) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(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 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(5) A position under the Executive Schedule paid under 5 U.S.C. 5311–5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(7) Any other position in a category for which payment of relocation incentives has been approved by OPM at the request of the head of an executive agency.

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(b) Except as provided in § 575.204, a legislative agency may pay a relocation incentive to an employee in a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

[70 FR 25743, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

§ 575.204 Ineligible categories of employees.

An agency may not pay a relocation incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;

(3) In which the employee is expected to receive an appointment as the head of an agency; or

(4) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

[70 FR 25743, May 13, 2005, as amended at 78 FR 49363, Aug. 14, 2013]

§ 575.205 Applicability to employees.

(a) An agency may pay a relocation incentive under the conditions prescribed in this subpart to an employee who—

(1) Relocates to a different geographic area (permanently or temporarily) to accept a position listed in § 575.203 in an agency when the position is likely to be difficult to fill, as determined under § 575.206; and

(2) Is an employee of the Federal Government immediately before the relocation.

(b) An agency may pay a relocation incentive under paragraph (a) of this section when an employee must relocate to accept a position or assignment in a different geographic area. A position is considered to be in a different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. If the worksite of the new position is less than 50 miles from the worksite of the position held immediately before the move, but the employee must relocate (*i.e.*, establish a new residence) to accept the position, an authorized agency official may waive the 50-mile requirement and pay the employee a relocation incentive subject to the requirements of this subpart. In all cases, the employee must establish a residence in the new geographic area before the agency may pay a relocation incentive to the employee. A relocation incentive may be paid only if the employee maintains residency in the new geographic area for the duration of the service agreement.

(c) A relocation incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) for the position held immediately before the move is at least "Fully Successful" or equivalent.

(d) An agency may not commence a relocation incentive service agreement during—

(1) A period of employment established under any service agreement required for a recruitment incentive under 5 CFR part 575, subpart A, or

(2) A period of employment established under any service agreement required for a relocation incentive previously authorized under this subpart.

(e) An agency may commence a relocation incentive service agreement during a period of employment estab-

lished under a service agreement for a previously authorized retention incentive or for which an employee is receiving previously authorized retention incentive payments without a service agreement under 5 CFR part 575, subpart C. The service period under such a relocation incentive service agreement and the service period required by the retention incentive service agreement, if applicable, must be fulfilled concurrently.

[70 FR 25743, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007; 78 FR 49364, Aug. 14, 2013]

§ 575.206 Authorizing a relocation incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when a position is likely to be difficult to fill under paragraph (b) of this section;

(2) Approve a relocation incentive for an employee under § 575.205;

(3) Establish the criteria for determining the amount of a relocation incentive and the length of a service period under §§ 575.209 and 575.210, respectively;

(4) Request a waiver from OPM of the limitation on the maximum amount of a relocation incentive under § 575.209(c); and

(5) Establish the criteria for terminating a service agreement under § 575.211.

(b) *Factors for determining when a position is likely to be difficult to fill.* An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies required for the position (or group of positions) in the absence of a relocation incentive. An agency must consider the following factors, as applicable to the case at hand, in determining whether a position (or group of positions) is likely to be difficult to fill in the absence of a relocation incentive and in documenting this determination as required by § 575.208: