

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 537

RIN: 3206-AJ12

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions authorizing Federal agencies to repay federally insured student loans when necessary to recruit or retain highly qualified professional, technical, or administrative personnel.

DATES: Effective February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. Mahoney, (202) 606-0830 (FAX 202-606-0390).

SUPPLEMENTARY INFORMATION: On June 22, 2000, OPM published proposed regulations to implement provisions of 5 U.S.C. 5379 (Public Law 101-510), Public Law 101-510 (National Defense Authorization Act for Fiscal Year 1991), section 1206, amends subchapter VII of 5 U.S.C. chapter 53, by adding a new section 5379. This section authorizes agencies to establish a program under which they may agree to repay all or part of an outstanding federally insured student loan to facilitate the recruitment or retention of highly qualified professional, technical, or administrative employees.

The repayment authority is one of several flexibilities made available to agencies when trying to attract individuals to the Federal service, or retain highly qualified professional, technical, or administrative personnel.

The final regulations describe the following: Loans Qualifying for Repayment, Employees Covered, Payment Limitations, Employee Service Requirements, and Selection Procedures.

Comments

OPM received comments from 15 agencies, four professional organizations, one labor union, and 14 individuals.

A few individuals opposed this regulation because they thought it was an unfair and inappropriate use of taxpayer monies. OPM disagrees and is moving forward with this regulation because we believe this incentive will benefit both agencies and employees. One individual thought this incentive was not fair to those individuals who never took out a student loan. Another

individual thought it was inappropriate for the Federal government to be repaying loans when no incentive was being offered to those who managed to pay off their loans or stay out of debt in the first place. OPM disagrees, noting that Congress established this authority in statute.

Several agencies noted that non-General Schedule (GS) employees would be excluded from this incentive. Consequently, they asked that employees serving on other pay scales (including people serving in demonstration projects) be included in the final regulation. OPM did not incorporate this suggestion because the limitation to GS employees is specified in the authorizing statute.

Six agencies commented that the two level review process was overly burdensome and redundant. OPM agreed and streamlined this section by deleting the higher level review and approval portion of this section. Agencies must establish student loan repayment plans which include delegation of authority to review and approve offering student loan repayment benefits, but no further review process is needed.

Two agencies suggested that the final regulations clarify which employees would be eligible for the student loan repayment incentive. OPM did not adopt this suggestion because we will address specific examples in accompanying Questions and Answers guidance.

Three agencies suggested that OPM drop the "case by case" review requirement in the Criteria for Payment section. OPM adopted this suggestion. Several agencies complained that the "factors to be considered" portion of this section were overly restrictive and burdensome. OPM adopted this suggestion by deleting these considerations.

Twelve agencies suggested that OPM clarify the tax implications of this incentive and offer alternatives to help lessen the impact of a potential tax burden on recipients of this incentive. OPM adopted this suggestion and added language clarifying how agencies can make payments to ease the tax burden on recipients of loan repayment benefits. The final regulations specify that tax withholdings must be applied at the time any loan repayment is made. The final regulations also advise agencies that:

- In addition to lump sum payments, smaller, incremental payments can be made;
- Employees can write checks to the agency to cover their tax liability rather

than have large withholdings deducted from their paychecks;

- Withholdings can be deducted from the amount of the loan repayment before it is issued; and
- The Internal Revenue Service should be consulted for specifics concerning the tax withholding implications of this incentive.

Several agencies suggested the final regulations shorten the three-year service requirement or give agencies the flexibility to prorate the service requirement when the full amount of the incentive is not being offered. OPM did not adopt this suggestion because the requirement is specified in statute. One agency suggested the final regulations clarify whether a new service agreement is needed when an agency extends or renews loan repayments. OPM adopted this suggestion with language stating a new service agreement is not needed in these situations but that agencies should say as much in their service agreements.

Several agencies suggested the final regulations require that individuals separated involuntarily for performance should have the same reimbursement obligation as employees who were separated involuntarily for misconduct. OPM adopted this suggestion. Also, several agencies suggested the final regulations specify that reimbursements to the Government can be made on a pro-rata basis. The regulations already provide for agencies to waive, in whole or in part, a right of recovery of an employee's debt.

Finally, one agency suggested the final regulations reduce the length of time agencies must keep records for payments made under this part from three years to two years. OPM did not adopt this suggestion because the 3-year requirement is consistent with the Governmentwide standard published by the National Archives and Records Administration for retaining records on other recruitment and retention incentives.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 537

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is adding part 537 to title 5, Code of Federal Regulations, to read as follows:

PART 537—REPAYMENT OF STUDENT LOANS

Sec.

- 537.101 Purpose.
- 537.102 Definitions.
- 537.103 Agency loan repayment plans.
- 537.104 Employee eligibility.
- 537.105 Criteria for payment.
- 537.106 Procedures for making loan repayments.
- 537.107 Service agreements.
- 537.108 Loss of eligibility for loan repayment benefits.
- 537.109 Employee reimbursements to the Government.
- 537.110 Records.

Authority: 5 U.S.C. 5379.

§ 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, which authorizes agencies to establish a program under which they may agree to repay (by direct payment on behalf of the employee) all or part of any outstanding federally insured student loan or loans previously taken out by a candidate to whom an offer of employment has been made, or a current employee of the agency, in order to recruit or retain highly qualified professional, technical or administrative personnel.

§ 537.102 Definitions.

In this part:

Agency has the same meaning as in 5 U.S.C. 4101(l) subparagraph (A), (B), (C), (D), or (E).

Employee has the meaning given that term in 5 U.S.C. 2105, except it does not include an employee occupying a position which —

(a) Is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character (*i.e.*, employees serving under Schedule C appointments); or

(b) Is not subject to the General Schedule established under 5 U.S.C. chapter 53, subchapter III.

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

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency of not less than 3 years, in return for payments toward a student loan previously taken out by the employee.

Student loan means—

- (a) A loan made, insured, or guaranteed under parts B or E of title IV of the Higher Education Act of 1965; or
- (b) A health education assistance loan made or insured under part C of title VII of the Public Health Service Act, or under part B of title VIII of that Act.

§ 537.103 Agency loan repayment plans.

(a) *Agency loan repayment plans.*

Before repaying any student loans under this part, the head of an agency must establish a student loan repayment plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve offering student loan repayment benefits (agencies should use approval delegations which are similar to those used for other recruitment and relocation incentives);

(2) The situations when the loan repayment authority may be used;

(3) Criteria that must be met or considered in authorizing loan repayments, including criteria for determining the size and timing of a payment(s);

(4) Procedures for making loan payments;

(5) A system for selecting employees to receive repayment benefits that ensures fair and equitable treatment;

(6) Requirements for service agreements (including a basis for determining the length of service to be required if greater than the statutory minimum) and provisions for recovering any amount outstanding from an employee who fails to complete the period of employment established under a service agreement and for conditions when the agency decides to waive the employee's obligation to reimburse the agency for payments made under this part; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action taken in each case. (when an employee is considered for the repayment benefit.)

(b) [Reserved]

§ 537.104 Employee eligibility.

In accordance with the other provisions of this part and 5 U.S.C. 5379, an agency may authorize offering loan repayments benefits to recruit or retain—

(a) Temporary employees who are serving on appointments leading to conversion to term or permanent appointments; or

(b) Term employees with at least 3 years left on their appointment; or

(c) Permanent employees; or

(d) Employees serving on excepted appointments with conversion to term, career, or career conditional appointments (including, but not limited to, Career Intern or Presidential Management Intern appointments).

§ 537.105 Criteria for payment.

(a) *Written determination.* Loan repayments made under this part must be based on a written determination that, in the absence of offering loan repayment benefits, the agency would encounter difficulty either in filling the position with a highly qualified candidate, or retaining a highly qualified employee in that position. Agencies can decide for themselves who has the authority to make written determinations.

(b) *Determination for recruitment.* Each determination for recruitment purposes (including the amount to be paid) must be made before the employee actually enters on duty in the position for which he or she was recruited.

(c) *Determination for retention.* Payments authorized in order to retain an employee must be based upon a written determination that the high or unique qualifications of the employee or special need of the agency for the employee's services makes it essential to retain the employee, and that, in the absence of offering student loan repayment benefits, the employee would be likely to leave for employment outside the Federal service. This determination must 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.

(d) *Selecting employees.* When selecting employees to receive loan repayment benefits, agencies must adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

§ 537.106 Procedures for making loan repayments.

(a) *Conditions for payments.* Payments will be at the discretion of the agency and are subject to such terms, limitations, or conditions as may be

mutually agreed to in writing by the agency and employee. Payments may be applied only to the indebtedness outstanding at the time the agency and the employee enter into an agreement, and may not begin before the employee enters on duty with the agency. Student loan repayment benefits must be in addition to basic pay and any other form of compensation otherwise payable to the employee involved. Tax withholdings must be deducted or applied at the time any payment is made. Tax withholdings may not be spread out over time. Since these tax implications could create a financial hardship for the recipient of the repayment benefit, agencies can lessen the impact of tax withholdings on an employee's paycheck in one of the following ways:

- (1) Agencies can make smaller payments at periodic intervals throughout the fiscal year rather than issue payments under this part in one lump sum;
- (2) Employees can write a check to the paying agency to cover their tax liability rather than have the tax liability withheld from the employee's paycheck;
- (3) Agencies can deduct the amount of taxes to be withheld from the loan repayment benefit before issuing payment to the holder of the loan.
- (4) Agencies are strongly advised to consult the Internal Revenue Service for further details concerning these options as well as the tax withholding implications of payments under this part.

(b) *Loans to be repaid.* Before authorizing loan repayments, an agency must verify with the holder of the loan that the employee has an outstanding student loan that qualifies for repayment under this part. Agencies should verify remaining balances to ensure that loans are not overpaid. An agency may repay more than one loan as long as the loan repayments do not exceed the limits set forth in paragraph (c) of this section.

(c) *Size of payments.* In determining the size of the loan payments, an agency should take into consideration the employee's value to the agency, and how far in advance the agency can commit funds. If budgetary considerations are an issue, agencies have the discretion to determine the repayment benefit amount given to an employee each year. This type of arrangement must be included in the written service agreement with the employee. The amount paid by the agency is subject to all the following maximum limits:

- (1) \$6,000 per employee per calendar year; and

- (2) A total of \$40,000 per employee.

(d) *Employee responsibility.* The employee will be responsible for making loan payments on the portion of the loan(s) that continues to be the employee's responsibility. Payments under this part do not exempt an employee from his or her responsibility and/or liability for any loan(s) the individual has taken out. The employee will also be responsible for any income tax obligations resulting from the loan repayment benefit.

§ 537.107 Service agreements.

(a) Before any loan repayments may be made, an agency must require that the employee sign a written agreement to complete a specified period of employment with the agency and to reimburse the agency for loan repayment benefits, when required by § 537.109. This agreement may also specify any other employment conditions the agency considers to be appropriate, such as, but not limited to, the employee's position and the duties he or she is expected to perform, work schedule, or level of performance.

(b) The minimum period of employment to be established under a service agreement must be 3 years, regardless of the amount of loan repayment authorized. Agencies can state in their service agreements that increases or renewals of payments made under this part can be made without requiring the employee to enter into a new service agreement.

(c) A service agreement made under this part in no way constitutes a right, promise, or entitlement for continued employment or noncompetitive conversion to the competitive service. This language should be stated in the service agreement.

§ 537.108 Loss of eligibility for loan repayment benefits.

(a) An employee receiving loan repayment benefits from an agency will be ineligible for continued benefits from that agency if the employee:

- (1) Separates from the agency; or
- (2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the head of the agency; or
- (3) Violates any of the conditions of the service agreement.

(b) For the purpose of applying paragraph (a) of this section, in the case of an employee covered by an appraisal system established under part 430, subpart B, of this chapter, the employee's most recent rating of record must be at least level 3 ("Fully Successful").

§ 537.109 Employee reimbursements to the Government.

(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 will be indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits the employee received.

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

- (1) The employee is separated involuntarily on account of misconduct or performance; or
- (2) The employee leaves the agency voluntarily.

(c) If an employee fails to reimburse the agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding must 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, or through the appropriate provisions governing debt collection if the individual is no longer a Federal employee.

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

- (1) The employee is involuntarily separated for reasons other than misconduct or performance; or
- (2) The employee leaves the agency voluntarily to enter into the service of any other agency, unless reimbursement to the paying agency is otherwise specified in the service agreement.

(e) The head of an agency may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest.

(f) Any amount repaid, or recovered from, an employee under this section will be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited will be merged with other sums in such account and will be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

§ 537.110 Records

Each agency must keep a record of each determination made under this

part and make such records available for review upon OPM's request. These records may be destroyed after 3 years

or after OPM formally evaluates the program (whichever comes first).

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