

employee must use earned compensatory time off under this subpart in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

§ 550.1407 Forfeiture of unused compensatory time off.

(a) *After 26 pay periods.* (1) Except as provided in paragraph (a)(2) of this section, an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If an employee fails to use the compensatory time off within 26 pay periods after it was credited, he or she must forfeit such compensatory time off.

(2) If an employee with unused compensatory time off separates from Federal service or is placed in a leave without pay status in the following circumstances and later returns to service with the same (or successor) agency, the employee must use all of the compensatory time off by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited:

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and later returns to service through the exercise of a reemployment right provided by law, Executive order, or regulation; or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81 and later recovers sufficiently to return to work.

(b) *Upon transfer to another agency.* When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), he or she must forfeit his or her unused compensatory time off.

(c) *Upon separation.* (1) When an employee separates from Federal service, any unused compensatory time off is forfeited, except as provided in paragraph (c)(2) of this section.

(2) Unused compensatory time off will not be forfeited but will be held in abeyance in the case of an employee who separates from Federal service and later returns to service with the same (or successor) agency under the circumstances described in paragraph (a)(2) of this section.

(d) *Upon movement to a noncovered position.* When an employee moves to a Federal position not covered by this subpart, he or she forfeits any unused compensatory time off. This requirement does not prevent an agency

from using another legal authority to give the employee credit for compensatory time off equal to the forfeited amount.

§ 550.1408 Prohibition against payment for unused compensatory time off.

As provided by 5 U.S.C. 5550b(b), an individual may not receive payment under any circumstances for any unused compensatory time off he or she earned under this subpart. This prohibition against payment applies to surviving beneficiaries in the event of the individual's death.

§ 550.1409 Inapplicability of premium pay and aggregate pay caps.

Accrued compensatory time off under this subpart is not considered in applying the premium pay limitations established under 5 U.S.C. 5547 and 5 CFR 550.105 through 550.107 or the aggregate limitation on pay established under 5 U.S.C. 5307 and 5 CFR part 530, subpart B.

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**OFFICE OF PERSONNEL
MANAGEMENT**

5 CFR Part 576

RIN 3206-AJ76

**Voluntary Separation Incentive
Payments**

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on Voluntary Separation Incentive Payments (generally known as "VSIPs" or "buyouts"). These final regulations explain how an agency requests authority from OPM to offer Voluntary Separation Incentive Payments under the Chief Human Capital Officers Act of 2002, which applies to most executive branch agencies.

These final regulations also explain how agencies must inform employees returning from military leave of any Voluntary Separation Incentive Payment offers they may have missed while on military leave. Finally, these regulations explain how in exceptional circumstances an agency that is hiring a former employee who previously received a Voluntary Separation Incentive Payment may request that OPM waive the general requirement that the individual repay the incentive if

reemployed in the Government within 5 years of receiving the incentive.

DATES: These regulations are effective January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon K. Ginley at (202) 606-0960, fax at (202) 606-2329, TTY at (202) 418-3134, or e-mail at sharon.ginley@opm.gov.

SUPPLEMENTARY INFORMATION: Section 1313(a) of the Chief Human Capital Officers Act of 2002 (Public Law 107-296; 116 Stat. 2135) added new sections 3521 through 3525 to title 5, United States Code, to allow executive branch agencies, at their option, to offer Voluntary Separation Incentive Payments to employees who separate by voluntary retirement or by resignation. On February 4, 2003, OPM issued interim regulations to revise part 576 of title 5, Code of Federal Regulations, with a request for public comments. These final regulations incorporate public comments and make clarifying revisions.

To offer buyouts, an agency must submit a plan for OPM approval. The plan must describe how the agency will use Voluntary Separation Incentive Payments as a tool to facilitate its restructuring goals. OPM will review each agency's plan and, in consultation with the Director of the Office of Management and Budget (OMB), may make any appropriate modifications to the agency's plan for Voluntary Separation Incentive Payments. The review may include a consideration of costs and benefits associated with using the authority. OPM will issue supplemental guidance for agency use in preparing a VSIP implementation plan. The agency must have OPM approval before using this flexibility.

A former employee who accepts any employment with the Government of the United States for compensation within 5 years after the date of separating for a Voluntary Separation Incentive Payment must repay the entire amount of the incentive payment before the first day of reemployment in the Federal service. Under exceptional circumstances, and at the request of the hiring agency, the OPM Director may waive the repayment requirement for former executive branch employees.

Comments Received

OPM received five comments from agencies concerning the interim regulations. One agency pointed out that the interim regulations contained the words "* * *" to offer Voluntary Separation Incentive Payments to surplus or displaced employees." The agency pointed out that the words

“surplus or displaced” were not in Public Law 107–296. We agree that the words are unnecessary, but note that they were mentioned only in the Supplementary Information to the interim regulations, and not the actual interim regulations themselves. We have not included those words in the final regulations.

Two agencies disagreed with OPM’s interpretation of the phrase “currently employed for a continuous period of at least 3 years,” which is a minimum service requirement for a Voluntary Separation Incentive Payment. OPM’s interpretation has been 3 years of continuous employment within the same agency, and it had been included in OPM’s instructions to agencies in the use of Voluntary Separation Incentive Payments (attached to Voluntary Separation Incentive Payment approval letters). For purposes of clarification, in order to fall within the coverage of section 576.101(b) of this regulation, an individual must have 3 years of current continuous employment as an employee within the meaning of 5 U.S.C. 2105 or 16 U.S.C. 590(h)(b)(5).

One agency expressed concern with the regulations allowing OPM, in consultation with OMB, to modify an agency’s buyout plan. They said that the requesting agency should also be consulted before any changes are made to its plans. Although the statute does not require OPM to consult with the agency before modifying a plan, we agree with the commenter, and have made the suggested change.

Two agencies expressed concern that the requirements in section 576.102(c) of the interim regulations are more restrictive than the provisions of Public Law 107–296. Section 576.102(c) of the interim regulations requires listings of employees by organizational unit, geographic location, occupational category, and grade level. Public Law 107–296 requires “* * * a description of which categories of employees will be offered incentives.” Of the two agencies that commented about this section, one felt that the more detailed requirements in section 576.102(c) hamper managerial flexibility during restructuring. The other agency expressed concern that these requirements hinder an agency’s ability to plan for restructuring (and submit requests for buyout authority) during periods when competitive sourcing is being studied. They pointed out that specific information about the positions for which they intend to offer buyouts might be sensitive at that time. Also, they said, such information might be inaccurate depending upon whether they won or lost a bid.

In addition to the Public Law 107–296 requirement the agency cited above, the statute also requires that agency plans identify “the specific positions and functions to be reduced or eliminated” and specifies the basis upon which employees shall be offered voluntary incentive payments. Identifying specific positions and functions necessarily entails identification of organizational units, occupational series or levels, and geographic locations. OPM believes, therefore, that its requirements are consistent with the statute and in the best interest of the Federal Government. Requiring the specific information about the positions for which agencies plan to offer buyouts is the best way to ensure that agencies’ buyout plans are executed in the manner intended by the statute. Retaining the level of position specificity shown in the interim regulations will reinforce the fact that this is a management tool and not an employee entitlement. In regard to the competitive sourcing comment, OPM will work with agencies to determine the best course of action during study periods. For these reasons, we are retaining the specific position requirements contained in section 576.102(c) of the interim regulations. They can be found in section 576.102(a) of the final regulations.

Final Rule

New subpart A of 5 CFR part 576 defines the terms “Employee” and “Specific Designee” and provides additional guidance concerning making buyout offers to employees.

New subpart B of 5 CFR part 576 discusses the term “employment with the Government of the United States” for buyout repayment and waiver of buyout repayment purposes. It indicates that personal service contracts and other direct contracts are considered to be employment with the Government of the United States for buyout repayment purposes. Like other buyout recipients who accept Federal employment within 5 years of receipt of a buyout, employees working on personal service contracts and other direct contracts are also subject to buyout repayment if they begin working on such contracts within 5 years of receipt of a buyout.

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.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 576

Government employees, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends part 576 of title 5, Code of Federal Regulations, as follows:

■ 1. Part 576 is revised to read as follows:

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Voluntary Separation Incentive Payments

Sec.

576.101 Definitions.

576.102 Voluntary Separation Incentive Payment implementation plans.

576.103 Offering Voluntary Separation Incentive Payments to employees.

576.104 Additional agency requirements.

576.105 Existing Voluntary Separation Incentive Payment authorities.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

576.201 Definitions.

576.202 Repayment requirement.

576.203 Waivers of the Voluntary Separation Incentive Repayment requirement.

Authority: Sections 3521, 3522, 3523, 3524, and 3535 of title 5, United States Code.

Subpart A—Voluntary Separation Incentive Payments

§ 576.101 Definitions.

In this part:

Employee, as defined in 5 U.S.C. 3521, means an employee as defined under 5 U.S.C. 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

(1) Is serving under an appointment without time limitation; and

(2) Has been currently employed for a continuous period of at least 3 years.

Specific designee means a senior officer or official within an agency who has been specifically designated to sign requests for authority to offer Voluntary Separation Incentive Payments for, or in place of, the head of the agency. Examples include the Chief Human Capital Officer, the Assistant Secretary for Administration, the Director of Human Resources Management, or a deputy of one of these persons.

§ 576.102 Voluntary Separation Incentive Payment implementation plans.

(a) In accordance with section 3522(b) of title 5, United States Code, a plan submitted by the head of an agency, or his or her specific designee, must include:

(1) Identification of the specific positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational series, grade level and any other factors related to the position;

(2) A description of the categories of employees who will be offered incentives identified by organizational unit, geographic location, occupational series, grade level and any other factors, such as skills, knowledge, or retirement eligibility (as discussed in implementing guidance);

(3) The time period during which incentives may be paid;

(4) The number and maximum amounts of Voluntary Separation Incentive Payments to be offered;

(5) A description of how the agency will operate without the eliminated or restructured positions and functions;

(6) A proposed organizational chart displaying the expected changes in the agency's organizational structure after the agency has completed the incentive payments;

(7) A short explanation of how Voluntary Early Retirement Authority will be used in conjunction with separation incentives, if the agency has requested, or will request, that authority; and

(8) A description of how Voluntary Separation Incentives offered under another statutory authority are being used, if the agency is offering incentives under any other statutory authority.

(b) When submitting a plan to OPM, the agency may submit either:

(1) A specific Voluntary Separation Incentive Payment implementation plan outlining the intended use of the incentive payments, or

(2) The agency's human capital plan, which outlines the intended use of the incentive payments and the expected changes in the agency's organizational structure after the agency has completed the incentive payments. If the human capital plan is submitted, it must include the information specified in paragraph (a) of this section.

(c) OPM will consult with the Office of Management and Budget regarding the plan and any subsequent modifications, and will notify the agency head in writing when the plan is approved. The review may include a consideration of costs and benefits associated with using the authority. If there are questions concerning the

agency's plan, OPM reserves the right to contact the agency, inform agency staff of its concerns, and require that the agency revise the plan to bring it into conformance with these regulations. The agency must obtain OPM approval before offering incentives under this authority.

§ 576.103 Offering Voluntary Separation Incentive Payments to employees.

(a) Agencies may make offers of Voluntary Separation Incentive Payments to employees who agree to voluntarily separate by resignation, early retirement, or optional retirement.

(b) Each time an agency with authority to offer Voluntary Separation Incentive Payments establishes a window period for acceptance of Voluntary Separation Incentive applications, it may limit offers to its employees based on an established opening and closing date or the acceptance of a specified number of applications. However, at the time of the offer, the agency must notify its employees that it retains the right to limit the number of Voluntary Separation Incentive Payment offers by use of a specific closing date or by receipt of a specified number of applications.

(c) An agency's downsizing and/or reshaping strategy may change, necessitating a change in the offer notice to employees. If the amended notice includes a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If a new or separate notice includes a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as the new group is covered by the approved Voluntary Separation Incentive Payment authority.

(d) Section 4311 of title 38, United States Code, requires that, for all practical purposes, agencies treat employees on military duty as though they were still on the job. Further, employees are not to be disadvantaged because of their military duty. In accordance with these provisions, employees on military duty who would otherwise be eligible for an offer of a Voluntary Separation Incentive Payment will have 30 days following their return to duty to either accept or reject an offer of a Voluntary Separation Incentive Payment. This is true even if the

Voluntary Separation Incentive Payment authority provided by OPM has expired.

(e) An employee may separate from the service voluntarily, with a Voluntary Separation Incentive Payment, if, on the date of separation, the employee:

(1) Is serving in a position covered by a Voluntary Separation Incentive Payment offer; and

(2) Meets the definition of employee discussed in 5 U.S.C. 3521.

(f) Agencies are responsible for ensuring that employees are not coerced into accepting a Voluntary Separation Incentive Payment. If an agency finds any instances of coercion, it must take appropriate corrective action.

(g) An agency may not offer Voluntary Separation Incentive Payments beyond the stated expiration date of an authority or assign an effective date for a Voluntary Separation Incentive Payment that is beyond the time period for paying a Voluntary Separation Incentive Payment that was stated in the agency's approved Voluntary Separation Incentive Payment plan.

(h) An agency may not offer Voluntary Separation Incentive Payments to employees who are outside the scope of the Voluntary Separation Incentive Payment authority approved by OPM.

(i) OPM may amend, limit, or terminate Voluntary Separation Incentive Payment authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval or to ensure that the law and regulations governing Voluntary Separation Incentive Payments, including the Voluntary Separation Incentive Payment usage reporting requirements, are being properly followed.

§ 576.104 Additional agency requirements

(a) After OPM approves an agency's plan for Voluntary Separation Incentive Payments, the agency is required to immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the Voluntary Separation Incentive Payment authority.

(b) Agencies are required to provide OPM with interim and final Voluntary Separation Incentive Payment reports, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a Voluntary Separation Incentive Payment authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's Voluntary Separation Incentive Payment authority approval letter.

§ 576.105 Existing Voluntary Separation Incentive Payment authorities.

As provided in section 1313(a)(3) of Public Law 107–296, any agency exercising Voluntary Separation Incentive authority in effect on January 24, 2003, may continue to offer Voluntary Separation Incentives consistent with that authority until that authority expires. An agency that is eligible to offer Voluntary Separation Incentive Payments under this authority and under any other statutory authority may choose which authority it wishes to use, or offer incentives under both.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments**§ 576.201 Definitions.**

Employment means employment with the Government of the United States, including employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch) unless employed pursuant to § 576.203(a).

§ 576.202 Repayment requirement.

An executive branch employee who received a Voluntary Separation Incentive Payment as described in subpart A of this part and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based must repay the entire amount of the Voluntary Separation Incentive Payment to the agency that paid it before the individual's first day of reemployment.

§ 576.203 Waivers of the Voluntary Separation Incentive Repayment requirement.

(a)(1) If the proposed reemployment is with an agency other than the General Accountability Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

(i) The individual involved possesses unique abilities and is the only qualified applicant available for the position; or

(ii) In case of an emergency involving a direct threat to life or property, the individual—

(A) Has skills directly related to resolving the emergency; and

(B) Will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

(2) If the proposed reemployment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the

individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) If the proposed reemployment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(4) The repayment waiver provisions under this section do not extend to a repayment obligation resulting from employment under a personal services contract or other direct contract.

(b) For a Voluntary Separation Incentive Payment made under statutory authority other than subpart A of this part, the agency should review the authorizing statute and, if a waiver is permitted, submit a request as specified by that statute.

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BILLING CODE 6325–39–M

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 701****Loan Interest Rates**

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union maximum loan rate is scheduled to revert to 15 percent on March 9, 2005, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period March 9, 2005 through September 8, 2006. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

DATES: Effective February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Strategic Program Support and Planning, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone (703) 518–6620.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1980, raised the loan interest rate ceiling for federal credit unions from one percent per month (12 percent per year) to 15 percent per year. 12 U.S.C. 1757(5)(A)(vi). The law also authorized the Board to set a higher limit, after consulting with Congress, the Department of Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board determined that: (1) Money market interest rates have risen over the preceding six months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling to 21 percent. In the unstable environment of the first half of the 1980s, the Board lowered the loan rate ceiling from 21 percent to 18 percent, effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present. The Board believes retaining the 18 percent ceiling will permit credit unions to continue to meet their current lending programs and permit the necessary flexibility for credit unions to react to any adverse economic developments.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. Credit unions are cooperatives and establish loan and share rates consistent with the needs of their members and prevailing market interest rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of their members.

Congress, however, has imposed loan rate ceilings since 1934, and, as stated previously, in 1980, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent, if conditions warrant. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Money Market Interest Rates

As Table 1 below shows, interest rates on United States Treasury securities