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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 575

RIN 3206-AM13

Pay Under the General Schedule and Recruitment, Relocation, and Retention Incentives

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations to improve oversight of recruitment and retention incentive determinations; add succession planning to the list of factors that an agency must consider before approving a retention incentive, if applicable; and make additional minor clarifications and corrections.

DATES: *Effective Date:* September 13, 2013.

FOR FURTHER INFORMATION CONTACT: Tom Bustard by telephone at (202) 606-2858; by fax at (202) 606-0824; or by email at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On January 7, 2011, the U.S. Office of Personnel Management (OPM) published proposed regulations (76 FR 1096) on General Schedule pay and recruitment, relocation, and retention incentives (3Rs). The 60-day comment period for the proposed regulations ended March 8, 2011. During the comment period, OPM received 10 comments from individuals and agencies. A summary of the comments received and OPM's responses is provided below.

Recruitment Incentives

OPM proposed revising the recruitment incentive regulations in 5 CFR 575.105(b) to require that an agency review each decision to authorize a

recruitment incentive for a group of similar positions at least annually to determine whether the positions are still likely to be difficult to fill. One agency recommended that OPM clarify what "similar positions" means (e.g., same occupational series, interdisciplinary positions, title, or duties). We agree and are providing factors that may be used to define the targeted group in section 575.105(b) of the final regulations.

OPM is also revising 5 CFR 575.109(c)(1) to clarify that an authorized agency official may request that OPM waive the 25 percent payment limitation for a group of employees (in addition to an individual employee) based on a critical agency need.

Relocation Incentives

OPM received comments from five agencies regarding the proposal to require an employee to maintain residency in the new geographic area for the duration of the service agreement in order to receive relocation incentive payments. We also received a comment from an individual who agreed with the current regulations at 5 CFR 575.205(b) that require the employee to establish a residence in the new geographic area before the payment of a relocation incentive. The proposed regulations did not change the requirement that an employee establish a residence in the new geographic area and it has been retained in these final regulations.

One agency commented that the proposed regulations would require an employee receiving a relocation incentive to maintain a residence within 50 miles of the new worksite. The agency was concerned that the proposed regulations would require the employee's incentive payment to be terminated if an employee chose to live outside of the 50-mile radius of the worksite. The agency suggested OPM provide agencies the authority to waive the requirement to maintain a residence in the new geographic area on a case-by-case basis.

We believe the suggestion is unnecessary. The regulations did not propose requiring an employee to maintain a residence within 50 miles of his or her official worksite. The current regulations in 5 CFR 575.205(b) allow the payment of a relocation incentive when an employee must relocate to accept a position at a worksite that is 50 or more miles from the worksite of the position held immediately before the

move. The employee must establish a residence in the new geographic area before the agency may pay a relocation incentive to the employee. The 50-mile requirement pertains to the distance between the worksites and ensures the new position is in a different geographic area, as required by 5 U.S.C. 5753(b)(2)(B)(ii)(II). There is no regulatory requirement that the employee must establish or maintain a residence within 50 miles of the new official worksite. Under the new provision in 5 CFR 575.205(b), it is up to each agency to define the limits of the new geographic area in which the employee must maintain residency for the duration of the service agreement to continue receiving the relocation incentive. We are clarifying in 5 CFR 575.210(d) that agencies must define what constitutes the "new geographic area" in relocation incentive service agreements.

The same agency asked for clarification on how agencies should handle employees who are moved outside of their geographic area as a result of a reorganization or transfer of function prior to the completion of the service period. The agency suggested the employees should continue to receive the relocation incentives if the move was management-driven and was not due to unacceptable performance or conduct.

We disagree. As provided in 5 CFR 575.210(a), before paying a relocation incentive, an agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function) at the new duty station. If the employee's position is transferred to a worksite outside of the duty station specified in the service agreement, the employee would not be able to fulfill the terms of the service agreement and the agency must terminate the service agreement. The termination provisions in 5 CFR 575.211(e) apply if such moves are a result of a management action under 5 CFR 575.211(a) and the employee would be able to keep any incentive payments already received. If the move is to a worksite that is 50 or more miles from the current worksite and the employee must establish a residence in the new geographic area, the agency could authorize a new relocation incentive if

the position would otherwise be difficult to fill. (If an employee who is receiving a relocation incentive is in a position that is subject to a transfer of function, but is not transferring to a different worksite, the employee could continue to receive the relocation incentive, depending on the specific terms of the service agreement.)

Another agency questioned what the proposed requirement about maintaining a residence in the new geographic location would accomplish. The agency claimed the objective of paying a relocation incentive is to fill a position that is likely to be difficult to fill without an incentive. The objective has been met as long as the employee continues to serve satisfactorily in the position for which the relocation incentive is being paid. The agency also noted that the current regulations allow agencies to include any other terms or conditions in the service agreement, such as a requirement to maintain a residence in the new area for the entire service agreement period.

We agree that the current regulations provide agencies with the flexibility to include terms in its service agreements that require employees to maintain a residence in the new geographic area. However, the purpose of this addition is to further clarify the intent of the law (5 U.S.C. 5753(b)(2)(B)(ii)(II)) to ensure the employee *must* relocate to accept the position. For example, if an employee established a residence in a new geographic location in order to receive a relocation incentive for a position, and shortly after moved back to his or her residence held prior to the relocation and commuted to the new worksite from there, it is apparent the employee did not need to relocate to accept the position.

Three agencies and an individual asked OPM to define or provide guidance on the terms “establish a residence” or “maintain a residence.” One agency recommended that OPM require employees to provide proof of residency in the new geographic area.

We are not defining “establish a residence” or “maintain a residence” in these final regulations. The meaning of these terms and the documentation needed to prove residency may vary based on agency policies for using relocation incentives. For example, some agencies may allow for the payment of relocation incentives for a short-term or temporary position change to a worksite in a different geographic area. Other agencies may reserve the use of relocation incentives for permanent geographic moves. Both situations are allowed under the regulations, which provide agencies the flexibility to

establish policies for residency criteria and proof to address varying program needs. An agency may not approve a relocation incentive unless it can document in writing that the employee established a residence in the new geographic area; thus, the regulations already require agencies to secure proof of residency from the employee. (See 5 CFR 575.208(a)(1)(iv).)

Another agency explained that some of its employees relocate several times during the course of their careers but maintain a permanent residence where they have family. In many cases, these employees relocate for work but leave family behind, similar to military members assigned to several tours of duty at different locations, but who return home eventually. If an employee lives in a particular location for a particular length of time (as required by the service agreement) the agency considers this to meet the requirement of maintaining residency. The agency recommends that OPM revise the language in the proposed regulation to reflect that employees must relocate their permanent residence to the new geographic area for the duration of the service agreement unless OPM agrees that an employee can maintain a permanent residence and a temporary residence while receiving a relocation incentive.

A revision to the regulations is not needed, as the phrase “maintain residency” does not require a change in the employee’s *primary* residence. The agency is correct that, while an employee must relocate to the new geographic area, the relocation incentive regulations do not require the employee to change his or her primary residence; that is, the employee does not necessarily have to physically move his or her family, household, goods, etc., from the “old” geographic area. If the employee does not change his or her primary residence upon taking a position in a different geographic area, the employee must establish a temporary or second residence (e.g., rent an apartment) in the “new” geographic area in order to receive a relocation incentive.

Because of the comments we received on establishing and maintaining a residence, we plan to provide further guidance on this issue outside of the regulations. We encourage agencies to incorporate the guidance OPM provides regarding these issues, including residency criteria and proof, in their own relocation incentive plans, as applicable.

An agency suggested that if OPM made its proposed relocation incentive change final, agencies will need to

revise their service agreements. OPM expects that agencies will include the change in any service agreements that are effective after the effective date of the final regulations.

Retention Incentives

General

One individual recommended terminating all retention incentives to reduce the size of the Federal Government. We are not adopting this recommendation. OPM has delegated to agencies the authority to authorize retention incentives to help strategically address its critical workforce needs. Under 5 CFR 575.311, an agency may terminate a retention incentive at any time based solely on management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. In addition, OPM and the Office of Management and Budget (OMB) have asked agencies to limit their spending on the 3Rs in the current fiscal environment. In a June 10, 2011, memorandum, OPM and OMB asked agencies to ensure that spending on the 3Rs in calendar year 2011 and calendar year 2012, respectively, does not exceed calendar year 2010 levels. (See the memorandum at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=3997> for additional information.) OMB continued these spending limitations in an April 4, 2013, memorandum. (See <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-11.pdf> for additional information.)

Succession Planning

One agency recommended that OPM include information in the text of revised section 575.306(b)(2) of the final regulations that was in the supplementary information for the proposed regulations on how succession planning applies to leadership positions. Also, the agency was concerned that OPM would be removing the current section 575.306(b)(2). The agency stated the current section spoke to workforce planning in a very general sense and would serve to cover positions not included in agency succession planning efforts. The agency believes current paragraph (b)(2) should be retained and a more specific reference to workforce planning should be included in the regulations. It is the agency’s view that there is a distinction between succession planning for leadership positions and workforce planning for non-leadership positions.

The current paragraph (b)(2) would not be removed; rather, it is being

redesignated as paragraph (b)(3) in these final regulations. Also, we are not amending the regulations as suggested because succession planning can apply to non-leadership positions. We are clarifying that succession plans for leadership positions are one type of succession plan.

The same agency was also concerned the succession planning requirement would be difficult to apply to some of its more hard-to-fill and highly-specialized positions. The agency stated that there is not a robust cadre of employees from which to choose in many situations. The agency hopes this situation would be taken into account, given the phrasing of the proposed regulations at 5 CFR 575.306(b)(2). We agree. The introductory text of section 575.306(b) remains unchanged in these regulations; it requires simply that the agency “consider . . . as applicable in the case at hand” the quality and availability of the potential sources of employees that are identified in the agency’s succession plan before authorizing a retention incentive.

Administration and Oversight of Recruitment, Relocation, and Retention Incentives

One individual recommended OPM determine which occupations meet the criteria for the 3Rs (i.e., likely to be difficult to fill or likely to leave the Federal service) to prevent the misuse of 3Rs. The individual suggested OPM base its determination on employee qualifications, agency needs, and recruitment and retention efforts. The individual was particularly concerned about agencies paying a retention incentive to an employee who is not critical to an agency mission or is not likely to leave for a different position.

We are not adopting this recommendation. Agencies have many different missions, and mission-critical occupations vary across the Government. They would likely change over time, based on changing agency needs, and it is not feasible for OPM to identify these positions by regulation. Agencies may list mission-critical occupations in their 3Rs plans. Even if an employee is in an identified mission-critical occupation, an agency must confirm the employee is eligible for a recruitment, relocation, or retention incentive under 5 CFR 575.106(b), 575.206(b), or 575.306(b) and provide the appropriate written determination before approving the incentive. If agencies discover incentives paid in violation of the law and regulations, they are responsible for correcting the personnel action to ensure compliance. (See internal monitoring requirements

in 5 CFR 575.112, 575.212, and 575.312.) These final regulations add increased oversight of retention incentives by requiring that all retention incentive authorizations are reviewed at least annually to ensure they are still warranted and, if the original determination to pay an incentive no longer exists, the retention incentive is terminated. (See 5 CFR 575.311(a) and (f).)

The same individual recommended that OPM direct the Government Accountability Office (GAO) to conduct periodic audits of agencies to evaluate their compliance with the regulations. OPM has no authority to direct GAO to conduct periodic audits of agencies’ use of the 3Rs; rather, that authority lies with Congress. However, OPM provides oversight by periodically conducting two types of evaluations—human capital management evaluations and delegated examining reviews—and participating in agency-led evaluations. As part of these evaluations, OPM reviews an agency’s 3Rs incentive plans, including designation of the proper approval authority, documentation of individual incentive decisions, and agency 3Rs incentive data for compliance with applicable regulations. OPM may require corrective actions or revoke an agency’s 3Rs authority if the agency fails to comply with applicable laws and regulations. (See 5 CFR 575.112, 575.212, and 575.312.)

The same individual also commented that the documentation requirements for retention incentives need to be tightened up. The individual claimed there is no requirement for an individual to present a valid private-sector job offer. For example, an employee only needs to convince his or her boss that one has been proffered and there is no requirement for maintaining this documentation that is consistent throughout the Federal Government.

We have purposefully left it up to each agency to determine its own requirements for documenting that an employee is likely to leave Federal employment. Employees may leave the Federal service for reasons other than private-sector employment, such as retirement or personal reasons. Agencies may, in their agency retention incentive plans, require documentation of private-sector job offers or other relevant documentation.

The same individual also commented that OPM should have processes in place regarding recovery of 3Rs payments made to individuals who fail to provide required documentation. We did not amend the regulations in response to this comment. The regulations already require that

documentation must be verified prior to the payment of a recruitment, relocation, or retention incentive (see 5 CFR 575.108, 575.208, and 575.308). OPM also requires the repayment of all recruitment incentives that were earned as a result of material false or inaccurate statements, deception, or fraud (see 5 CFR 575.111(j)). Also, under 5 CFR 575.111(b), 575.211(b), and 575.311(b), an authorized agency official must terminate a recruitment, relocation, or retention incentive service agreement if an employee is demoted or separated for cause, if the employee receives a rating of record of less than “fully successful” or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement. Additionally, an authorized agency official may terminate a recruitment, relocation, or retention incentive based solely on management needs of the agency (5 CFR 575.111(a), 5 CFR 575.211(a), 5 CFR 575.311(a)(2)).

Reports

An agency and an individual commented on the reporting requirements for recruitment, relocation, and retention incentives. The individual recommended that OPM establish procedures for agencies to report the status of 3Rs quarterly or annually and publish the results for public viewing. The individual stated this would increase transparency and would help the agencies police themselves. The agency requested that OPM provide additional information regarding the payroll and nature of action code data elements used to verify the Governmentwide 3Rs data. The agency said that knowledge of these data elements would enable agencies to report accurate data to their payroll providers and the Enterprise Human Resources Integration (EHRI) system.

We did not revise the regulations in response to these comments. However, we are removing duplicative reporting requirements. OPM was required by law to submit an annual report to Congress on agencies’ use of 3Rs in calendar years 2005–2009, available online at <http://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/#url=Memos-Reports>. The proposed regulations removed this reporting requirement, but provided that OPM may require that each agency submit a report to OPM on its use of incentives in the previous calendar year to support continued monitoring of agency incentive use. We are not including this proposed discretionary reporting requirement in the final regulations consistent with Executive Order 13583 of August 18,

2011, entitled “Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce”. This Executive order included a requirement that OPM review directives to agencies related to agency human capital and other workforce plans and reports and develop a strategy for consolidating them. After further review, we have determined that a new 3Rs reporting requirement is unnecessary to support continued monitoring of incentive use. Agencies are already required to monitor incentive use under §§ 575.112, 575.212, and 575.312; make 3Rs records available for review upon OPM’s request under §§ 575.113, 575.213, and 575.313; and report 3Rs information to OPM central data systems following the standards issued under 5 CFR 9.2. They also may post public information on incentive use at their discretion. Agencies can find instructions for processing 3Rs in chapter 29 of the Guide to Processing Personnel Actions and information on 3Rs payroll data elements in part B of the Guide to Data Standards. These Guides are available on OPM’s Web site.

An individual commented that the focus of the regulations should be expanded to include other types of retention tools—for example, merit awards, having a comfortable and healthy working environment, and flexibility to work across bureau lines. OPM agrees that there are alternatives to paying employees retention incentives, as described in 5 CFR 575.306(b)(4). However, these regulations are narrow in focus because they implement the retention incentive law in 5 U.S.C. 5754.

Employee Eligibility

The proposed regulations clarified employee eligibility for recruitment incentives and having pay set using the General Schedule superior qualifications and special needs pay-setting authority. An agency asked OPM to clarify employee eligibility for use of the superior qualifications and special needs pay-setting authority in the proposed 5 CFR 531.212(a). The agency asked for confirmation that an employee converting from a temporary Schedule C appointment to a regular Schedule C appointment would be precluded from the use of the superior qualifications and special needs pay-setting authority unless there was a 90-day break in service, but a 90-day break in service would not be required when converting from a 30-day special needs appointment under 5 CFR 213.3102(i)(2) (a Schedule A appointment) to a Schedule C appointment. This is

correct. However, the agency’s recommendation to revise 5 CFR 531.212(a)(5)(iii) to read “a position excepted from the competitive service . . . other than a temporary Schedule C position established under 5 CFR 213.3302” is not correct. A 90-day break in service is required when the previous employment was a Schedule C appointment, regardless of whether the appointment was temporary. We did not revise the regulations in response to these comments.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Law enforcement officers, Wages, U.S. Office of Personnel Management
Elaine Kaplan,
Acting Director.

Accordingly, OPM is amending 5 CFR parts 531 and 575 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304 and 5305; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart B—Determining Rate of Basic Pay

- 2. In § 531.212—
- a. Amend paragraph (a)(1)(ii) to remove the word “and” and add in its place “or”;
- b. Revise paragraph (a)(3); and
- c. Add a new paragraph (a)(5).

The revision and addition read as follows:

§ 531.212 Superior qualifications and special needs pay-setting authority.

(a) * * *

(3) Except as provided in paragraph (a)(5) of this section, an agency may use the superior qualifications and special needs pay-setting authority for a reappointment without requiring a 90-day break in service if the candidate’s civilian employment with the Federal Government during the 90-day period immediately preceding the appointment was limited to one or more of the following:

- (i) A time-limited appointment in the competitive or excepted service;
- (ii) A non-permanent appointment in the competitive or excepted service;
- (iii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;
- (iv) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;
- (v) Employment under a provisional appointment designated under 5 CFR 316.403;
- (vi) Employment under an Internship Program appointment under § 213.3402(a) of this chapter ; or
- (vii) Employment 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).

* * * * *

(5) An agency may not apply an exception in paragraph (a)(3) of this section if the candidate’s civilian employment with the Federal Government during the 90-day period immediately preceding the appointment was in one or more of the following types of positions:

- (i) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;
- (ii) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));
- (iii) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character;
- (iv) A position to which an individual is appointed by the President without the advice and consent of the Senate;
- (v) A position designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;
- (vi) A position in which the employee is expected to receive an appointment as the head of an agency; or
- (vii) A position 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.

* * * * *

PART 575—RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES; SUPERVISORY DIFFERENTIALS; AND EXTENDED ASSIGNMENT INCENTIVES

■ 3. Revise the authority citation for part 575 to read as follows:

Authority: 5 U.S.C. 1104(a)(2) and 5307; subparts A and B also issued under 5 U.S.C. 5753; subpart C also issued under 5 U.S.C. 5754; subpart D also issued under 5 U.S.C. 5755; subpart E also issued under 5 U.S.C. 5757 and sec. 207 of Public Law 107–273, 116 Stat. 1780.

Subpart A—Recruitment Incentives

■ 4. In § 575.102, revise paragraph (3) in the definition of *newly appointed* to read as follows:

§ 575.102 Definitions.

* * * * *

Newly appointed refers to—* * *

(3) An appointment of an individual in the Federal Government when his or her service in the Federal Government during the 90-day period immediately preceding the appointment was not in a position excluded by § 575.104 and was limited to one or more of the following:

- (i) A time-limited appointment in the competitive or excepted service;
- (ii) A non-permanent appointment in the competitive or excepted service;
- (iii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;
- (iv) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;
- (v) Employment under a provisional appointment designated under 5 CFR 316.403;
- (vi) Employment under an Internship Program appointment under § 213.3402(a) of this chapter; or
- (vii) Employment 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).

* * * * *

- 5. In § 575.104—
- a. Revise paragraph (d)(1);
- b. Remove “or” at the end of paragraph (d)(2);

■ c. Remove the period at the end of paragraph (d)(3) and add a semicolon and “or” in its place; and

■ d. Add a new paragraph (d)(4).
The revision and addition read as follows:

§ 575.104 Ineligible categories of employees.

* * * * *

(d) * * *

(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));

* * * * *

(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.

■ 6. In § 575.105, revise paragraph (b) to read as follows:

§ 575.105 Applicability to employees.

* * * * *

(b)(1) An agency may target groups of similar positions (excluding positions covered by § 575.103(a)(2), (a)(3), or (a)(5) or those in similar categories approved by OPM under § 575.103(a)(7)) that have been difficult to fill in the past or that may be difficult to fill in the future and make the required determination to offer a recruitment incentive to newly-appointed employees on a group basis.

(2) An agency must define a targeted category of positions using factors that relate to the conditions described in § 575.106(b). Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique competencies required for the positions, and geographic location.

(3) An agency must review each decision to target a group of similar positions for the purpose of granting a recruitment incentive at least annually to determine whether the positions are still likely to be difficult to fill. An authorized agency official must certify this determination in writing. If an agency determines the positions are no longer likely to be difficult to fill, the agency may not offer a recruitment incentive to newly-appointed employees in that group on a group basis.

* * * * *

■ 7. In § 575.109, revise paragraph (c)(1) to read as follows:

§ 575.109 Payment of recruitment incentives.

* * * * *

(c)(1) An authorized agency official may request that OPM waive the limitation in paragraph (b)(1) of this section for an employee or group of employees based on a critical agency need. The authorized agency official must determine that the competencies required for the position(s) are critical to the successful accomplishment of an important agency mission, project, or initiative (e.g., programs or projects related to a national emergency or implementing a new law or critical management initiative). Under such a waiver, the total amount of recruitment incentive payments paid to an employee in a service period may not exceed 50 percent of the employee’s annual rate of basic pay at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period. However, in no event may a waiver provide total recruitment incentive payments exceeding 100 percent of the employee’s annual rate of basic pay at the beginning of the service period.

* * * * *

§ 575.113 [Amended]

■ 8. In § 575.113, remove paragraph (b) and remove the paragraph (a) designation.

§ 575.114 [Removed]

■ 9. Remove § 575.114.

Subpart B—Relocation Incentives

- 10. In § 575.204—
- a. Revise paragraph (d)(1);
- b. Remove “or” at the end of paragraph (d)(2);
- c. Remove the period at the end of paragraph (d)(3) and add a semicolon and “or” in its place; and
- d. Add a new paragraph (d)(4).

The revision and addition read as follows:

§ 575.204 Ineligible categories of employees.

* * * * *

(d) * * *

(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));

* * * * *

(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.

■ 11. In § 575.205, add a new sentence at the end of paragraph (b) to read as follows:

§ 575.205 Applicability to employees.

* * * * *

(b) * * * A relocation incentive may be paid only if the employee maintains residency in the new geographic area for the duration of the service agreement.

* * * * *

■ 12. In § 575.210, revise paragraph (d) to read as follows:

§ 575.210 Service agreement requirements.

* * * * *

(d) The service agreement must include the conditions under which the agency must terminate the service agreement (i.e., if an employee is demoted or separated for cause, receives a rating of record of less than "Fully Successful" or equivalent, fails to maintain residency in the new geographic area for the duration of the service agreement, or otherwise fails to fulfill the terms of the service agreement) and the conditions under which the employee must repay a relocation incentive under § 575.211. An agency must define the limits of the new geographic area in the service agreement for the purpose of determining whether an employee maintains residency in that geographic area for the duration of the service agreement.

* * * * *

■ 13. In § 575.211, revise paragraph (b) to read as follows:

§ 575.211 Termination of a service agreement.

* * * * *

(b) An authorized agency official must terminate a relocation incentive service agreement if an employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), if the employee receives a 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) of less than "Fully Successful" or equivalent, if the employee fails to maintain residency in the new geographic area for the duration of the service agreement, or if the employee otherwise fails to fulfill the terms of the service agreement.

* * * * *

§ 575.213 [Amended]

■ 14. In § 575.213, remove paragraph (b) and remove the paragraph (a) designation.

§ 575.214 [Removed]

■ 15. Remove § 575.214.

Subpart C—Retention Incentives

■ 16. In § 575.304—

- a. Revise paragraph (d)(1);
■ b. Remove "or" at the end of paragraph (d)(2);
■ c. Remove the period at the end of paragraph (d)(3) and add a semicolon and "or" in its place; and
■ d. Add a new paragraph (d)(4).

The revision and addition read as follows:

§ 575.304 Ineligible categories of employees.

* * * * *

(d) * * *

(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));

* * * * *

(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.

■ 17. In § 575.305, revise paragraph (c) to read as follows:

§ 575.305 Applicability to employees.

* * * * *

(c) An agency may not include in a group retention incentive authorization an employee covered by § 575.303(a)(2), (a)(3), or (a)(5) or those in similar categories of positions approved by OPM to receive retention incentives under § 575.303(a)(7).

* * * * *

■ 18. In § 575.306, redesignate paragraphs (b)(2) through (b)(8) as paragraphs (b)(3) through (b)(9), respectively, and add a new paragraph (b)(2) to read as follows:

§ 575.306 Authorizing a retention incentive.

* * * * *

(b) * * *

(2) The quality and availability of the potential sources of employees that are identified in any agency succession plan (e.g., succession plans required for leadership positions), who possess the

competencies required for the position, and who, with minimal training, cost, and disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;

* * * * *

■ 19. In § 575.311, redesignate paragraphs (a)(1) and (a)(2) as paragraphs (a)(2) and (a)(3), respectively, and add a new paragraph (a)(1) to read as follows:

§ 575.311 Continuation, reduction, and termination of retention incentives.

(a)(1) For each retention incentive that is subject to a service agreement, an authorized agency official must review the determination to pay a retention incentive at least annually to determine whether the original determination still applies or whether payment is still warranted as provided in paragraph (a)(2) of this section, and must certify this determination in writing.

* * * * *

§ 575.313 [Amended]

■ 20. In § 575.313, remove paragraph (b) and remove the paragraph (a) designation.

§ 575.314 [Removed]

■ 21. Remove § 575.314.

§ 575.315 [Redesignated as § 575.314]

■ 22. Redesignate § 575.315 as § 575.314.

■ 23. In the newly designated § 575.314:

- a. Remove paragraph (i)(2).
■ b. Redesignate paragraph (i)(1) introductory text and paragraphs (i)(1)(i) through (i)(1)(v) as paragraph (i) introductory text and paragraphs (i)(1) through (i)(5) respectively; and
■ c. Revise the redesignated paragraph (i) introductory text.

The revision reads as follows:

§ 575.314 Retention incentives for employees likely to leave for a different position in the Federal service.

* * * * *

(i) Records and reports. In addition to the recordkeeping requirements in § 575.313, each agency must submit a written report to OPM by March 31 of each year on the use of retention incentives under this section. Each report must include—

* * * * *