

(B) shall not include—

(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

(vi) any employee who—

(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

(Added Pub. L. 107–296, title XIII, §1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2291; amended Pub. L. 112–74, div. G, title I, §1401(b), Dec. 23, 2011, 125 Stat. 1134.)

Editorial Notes

AMENDMENTS

2011—Par. (1). Pub. L. 112–74 substituted “section 105 (other than the Government Accountability Office)” for “section 105”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–74 applicable to voluntary separation incentive payments made during fiscal year 2012 or any succeeding fiscal year, see section 1401(c) of Pub. L. 112–74, set out as a note under section 4505 of Title 2, The Congress.

EFFECTIVE DATE

Pub. L. 107–296, title XIII, §1313(a)(4), Nov. 25, 2002, 116 Stat. 2294, provided that: “This subsection [enacting this subchapter and provisions set out as notes under this section] shall take effect 60 days after the date of enactment of this Act [Nov. 25, 2002].”

SMITHSONIAN INSTITUTION EMPLOYEES

Pub. L. 108–72, §5, Aug. 15, 2003, 117 Stat. 889, provided that: “The Secretary of the Smithsonian Institution may establish a program for making voluntary separation incentive payments for employees of the Smithso-

nian Institution which is substantially similar to the program established under subchapter II of chapter 35 of title 5, United States Code (as added by section 1313(a) of the Homeland Security Act of 2002 [Pub. L. 107–296]).”

JUDICIAL BRANCH EMPLOYEES

Pub. L. 107–296, title XIII, §1313(a)(2), Nov. 25, 2002, 116 Stat. 2294, provided that: “The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) [enacting this subchapter] for individuals serving in the judicial branch.”

CONTINUATION OF OTHER AUTHORITY

Pub. L. 107–296, title XIII, §1313(a)(3), Nov. 25, 2002, 116 Stat. 2294, provided that: “Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection [see Effective Date note above] may continue to offer voluntary separation incentives consistent with that authority until that authority expires.”

SENSE OF CONGRESS

Pub. L. 107–296, title XIII, §1313(c), Nov. 25, 2002, 116 Stat. 2296, provided that: “It is the sense of Congress that the implementation of this section [enacting this subchapter, amending sections 8336 and 8414 of this title, enacting provisions set out as notes under this section and section 8336 of this title, and repealing provisions set out as notes under sections 8336 and 8414 of this title] is intended to reshape the Federal workforce and not downsize the Federal workforce.”

§ 3522. Agency plans; approval

(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

(b) The plan of an agency under subsection (a) shall include—

(1) the specific positions and functions to be reduced or eliminated;

(2) a description of which categories of employees will be offered incentives;

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

(4) the number and amounts of voluntary separation incentive payments to be offered; and

(5) a description of how the agency will operate without the eliminated positions and functions.

(c) The Director of the Office of Personnel Management shall review each agency’s plan an¹ may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive² of the Office of Personnel Management.

(Added Pub. L. 107–296, title XIII, §1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2292.)

¹ So in original. Probably should be “and”.

² So in original. Probably should be “Director”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 1313(a)(4) of Pub. L. 107-296, set out as a note under section 3521 of this title.

§ 3523. Authority to provide voluntary separation incentive payments

(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

(b) A voluntary incentive payment—

(1) shall be offered to agency employees on the basis of—

- (A) 1 or more organizational units;
- (B) 1 or more occupational series or levels;
- (C) 1 or more geographical locations;
- (D) skills, knowledge, or other factors related to a position;

(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

(F) any appropriate combination of such factors;

(2) shall be paid in a lump sum after the employee's separation;

(3) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

(B) an amount determined by the agency head, not to exceed \$25,000;

(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other¹ separation; and

(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(Added Pub. L. 107-296, title XIII, §1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2293.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 1313(a)(4) of Pub. L. 107-296, set out as a note under section 3521 of this title.

§ 3524. Effect of subsequent employment with the Government

(a) The term “employment”—

(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Gov-

ernment (other than an entity in the legislative branch); and

(2) in subsection (c) does not include employment under such a contract.

(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with¹ 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

(c)(1) If the employment under this section is with an agency, other than the Government Accountability Office, the United States Postal Service, or the Postal Regulatory Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may² waive the repayment if—

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

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

(i) has skills directly related to resolving the emergency; and

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

(2) If the employment under this section 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 employment under this section 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.

(Added Pub. L. 107-296, title XIII, §1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2293; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

Editorial Notes

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission” in introductory provisions.

2004—Subsec. (c)(1). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 1313(a)(4) of Pub. L. 107-296, set out as a note under section 3521 of this title.

§ 3525. Regulations

The Office of Personnel Management may prescribe regulations to carry out this subchapter.

¹ So in original. Probably should be “within”.

² So in original.

¹ So in original.