

# Rules and Regulations

Federal Register

Vol. 68, No. 23

Tuesday, February 4, 2003

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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:** Interim rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations on voluntary separation incentive payments (*i.e.*, "buyouts"). These regulations implement the voluntary separation incentive payment provisions of the Homeland Security Act of 2002, Public Law 107-296, which apply to most executive branch agencies.

These interim regulations explain how an agency requests authority from OPM to offer voluntary separation incentive payments. They also 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.

**DATES:** These regulations are effective February 4, 2003. OPM will consider written comments if received no later than April 7, 2003.

**ADDRESSES:** Send written comments to Ellen E. Tunstall, Assistant Director for Employment Policy, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Gray at 202-606-0960, FAX at 202-606-2329, TDDY at 202-418-3134, or e-mail at [cwgray@opm.gov](mailto:cwgray@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 1313(a) of the "Homeland Security Act of 2002" (Public Law 107-296, 116 Stat.

2135) amends chapter 35 of title 5, United States Code, to allow executive branch agencies, at their option, to offer voluntary separation incentive payments to surplus or displaced employees who separate by voluntary retirement or by resignation. 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, may make any appropriate modifications to the agency's plan for voluntary separation incentive payments. The agency must have OPM approval before using this flexibility.

New subpart A of 5 CFR part 576 implements these new voluntary separation incentive payment provisions, which are codified in sections 3521 through 3523 of title 5, United States Code.

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, the OPM Director may, at the request of the hiring agency, waive the repayment requirement for former executive branch employees.

New subpart B of 5 CFR part 576 covers both the general repayment requirement and the limited waiver provision of the Act, which are codified in section 3524 of title 5, United States Code.

OPM is continuing to collect data related to this program, both for oversight purposes and to evaluate the effectiveness of the program.

These regulations are published in response to the amendment of chapter 35 of title 5, United States Code, which relates to voluntary separation incentive payments. They are effective on January 24, 2003, as provided in section 1313(a)(4) of Public Law 107-296.

### Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the

general notice of proposed rulemaking because it would be contrary to the public interest to delay implementing management flexibilities which are provided by law. Section 1313(a)(4) of Public Law 107-296 provides that all of the provisions in the Department of Homeland Security Act of 2002 relating to voluntary separation incentive payments are effective 60 days from the date of enactment of the law. The law was enacted November 25, 2002.

### 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.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

Accordingly, OPM is revising part 576 of title 5, Code of Federal Regulations, 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

Sec.

576.201 Definitions.

576.202 Repayment requirement.

576.203 Waivers of the voluntary separation incentive repayment requirement.

**Authority:** 5 U.S.C. 3521, 3522, 3523, 3524, and 3525.

## Subpart A—Voluntary Separation Incentive Payments.

### § 576.101 Definitions.

Section 3521(1) of title 5, United States Code, contains the definition of *Agency*, and section 3521(2) of title 5, United States Code, contains the definition of *Employee*, as used in this subpart.

### § 576.102 Voluntary separation incentive payment implementation plans.

(a) Section 3522 of title 5, United States Code, specifies the information that the head of an agency must submit to the Office of Personnel Management (OPM). OPM will consult with the Office of Management and Budget (OMB) regarding the plan and will notify the agency head in writing when the plan is approved. The agency must have OPM approval before offering incentives under this authority.

(b) In submitting a plan to OPM under section 3522(a) of title 5, United States Code, the head of an agency may submit:

(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.

(c) In either case, the plan must include:

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

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

(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; and

(7) If the agency has requested, or will request Voluntary Early Retirement

Authority, a description of how that authority will be used in conjunction with separation incentives;

(8) If the agency is offering separation incentives under any other statutory authority, a description of how that authority is being used.

### § 576.103 Offering voluntary separation incentive payments to employees.

Section 3523 of title 5, United States Code, covers:

(a) The basis for an agency to offer a voluntary separation incentive payment;

(b) The computation of a voluntary separation incentive payment; and

(c) The appropriations or funds that the agency uses to pay the voluntary separation incentive payment.

### § 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 payments. OPM will consult with OMB and notify the agency in writing if there are changes in the OPM approval of the agency plan.

(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 letter approving that authority.

### § 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.

Section 3524(a) of title 5, United States Code, contains the definition of *Employment* as used in this subpart.

### § 576.202 Repayment requirement.

(a) Section 3524(b) of title 5, United States Code, contains the repayment requirement that applies if 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. The individual must repay the entire amount of the voluntary separation incentive payment to the agency that paid the voluntary separation incentive payment before the individual's first day of reemployment.

(b) An executive branch employee who received a voluntary separation incentive payment on or after March 30, 1994, under statutory authority other than subpart A of this part, and who 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, may be required by the authorizing statute to repay the entire amount.

### § 576.203 Waivers of the voluntary separation incentive repayment requirement.

(a)(1) Section 3524(c)(1) of title 5, United States Code, covers the conditions under which the Director of OPM may, at the request of the head of the hiring agency, waive the repayment required in § 576.202.

(2) Section 3524(a)(2) of title 5, United States Code, provides that the waiver provision under section 3524(c)(1) of title 5, United States Code, does 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.

[FR Doc. 03–2766 Filed 1–31–03; 2:50 pm]

BILLING CODE 6325–38–P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 875

RIN 3206–AJ71

### Federal Long Term Care Insurance Regulation

AGENCY: Office of Personnel Management.