

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 575

[Docket ID: OPM–2023–0027]

RIN 3206–AO36

### Recruitment and Relocation Incentive Waivers

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a proposed rule to expand the authority to approve waivers of the normal payment limitations on recruitment and relocation incentives. An expansion of the waiver approval authority would provide agencies with access to higher payment limitations for these flexibilities without requesting approval from OPM. Under this proposed rule, agencies would have the authority to approve a recruitment or relocation incentive of up to 50 percent of an employee's annual rate of basic pay multiplied by the number of years in a service agreement (not to exceed 100 percent of annual basic pay) based on a critical agency need. In addition, this proposed rule would give agencies flexibility to set the length of the required service period for recruitment incentives to a period less than 6 months but not more than 4 years, which would align the service requirements for recruitment incentives with those for relocation incentives and provide agencies with additional flexibility in taking advantage of this incentive as a recruitment tool.

**DATES:** Comments must be received on or before January 16, 2024.

**ADDRESSES:** You may submit comments, identified by the Regulation Identifier Number (RIN) number “3206–AO36” and title, using the following method:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Gene Holson by telephone at (202) 606–2858 or by email at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101 of the Federal Workforce Flexibility Act of 2004 (Act) (Pub. L. 108–411, October 30, 2004) amended 5 U.S.C. 5753 and 5754 by providing enhanced authorities to pay recruitment, relocation, and retention incentives. Congress originally provided the authority to pay such incentives under the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509, November 5, 1990). In the 2004 Act, Congress expanded the circumstances under which these flexibilities may be paid and enabled agencies to make the payments in more ways to enhance their desired effect in assisting Federal agencies' efforts to recruit and retain the kind of workforce needed in the 21st century. OPM's regulations at 5 CFR part 575, subparts A, B, and C, implement these authorities. This rulemaking proposes changes to the recruitment incentive regulations at 5 CFR part 575, subpart A, and relocation incentive regulations at 5 CFR part 575, subpart B, to provide agencies additional payment options. To differentiate these kinds of payments—which are designed to provide a monetary incentive for an individual to accept a new position, as opposed to rewarding an individual for quality of performance (the typical context in which the term “bonus” is used)—OPM's regulations use the term “incentive” in place of the term “bonus,” which is used in the statute.

##### Recruitment Incentives

Under 5 U.S.C. 5753 and 5 CFR part 575, subpart A, an agency may pay a recruitment incentive to an employee newly appointed to a General Schedule or other covered position in the Federal service when the agency determines the position is likely to be difficult to fill in the absence of an incentive. The

employee must sign an agreement to fulfill a period of service with the agency. A recruitment incentive may not exceed 25 percent of the employee's annual rate of basic pay in effect at the beginning of the service period, multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). Currently, this cap may be increased to up to 50 percent with OPM approval, based on a critical agency need, as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay. A recruitment incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final lump-sum payment upon completion of the service period, or in a combination of these methods. (See 5 CFR 575.109.)

Before paying a recruitment incentive, an agency must establish a recruitment incentive plan. (See 5 CFR 575.107(a).) The plan must include the designation of officials with authority to review and approve the payment of recruitment incentives, the designation of officials with authority to waive the repayment of a recruitment incentive, the categories of employees who may not receive recruitment incentives, the required documentation for determining that a position is likely to be difficult to fill, requirements for determining the amount of a recruitment incentive, the payment methods that may be authorized, requirements governing service agreements (including criteria for determining the length of a service period, the conditions for terminating a service agreement, and the obligations of the agency and the employee if a service agreement is terminated), and documentation and recordkeeping requirements. Unless the head of the agency determines otherwise, an agency recruitment incentive plan must apply uniformly across the agency. (See 5 CFR 575.107(c).)

For each determination to pay a recruitment incentive, an agency must document, in writing, the basis for determining that the position is likely to be difficult to fill in the absence of a recruitment incentive, the amount and timing of the incentive payments, and the length of the service period. The determination to pay a recruitment incentive must be made before the prospective employee enters on duty in

the position for which they are recruited. The authorized agency official must review and approve the recruitment incentive determination before the agency pays the incentive to the employee. (See 5 CFR 575.107(b), 575.108.) Payment of a recruitment incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B. (See 5 CFR 575.109(f).)

An agency may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies (*i.e.*, knowledge, skills, abilities, behaviors, and other characteristics) required for the position (or group of positions) in the absence of a recruitment incentive based on a consideration of the factors listed in 5 CFR 575.106(b). An agency also may determine that a position is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position. (See 5 CFR 575.106(c).) The use of recruitment incentives can help agencies expand applicant pools to include more diverse candidates.

Before receiving a recruitment incentive, an employee must sign a written agreement to complete a specified period of employment with the agency of not less than 6 months. The service agreement must specify the length, commencement date, and termination date of the service period; the total amount of the incentive; the method, timing, and amounts of incentive payments; the conditions under which an agreement will be terminated by the agency; any agency or employee obligations if a service agreement is terminated (including the conditions under which the employee must repay an incentive or under which the agency must make additional payments for partially completed service); and any other terms and conditions for receiving and retaining a recruitment incentive. (See 5 CFR 575.110.) OPM has provided a fact sheet with additional information on recruitment incentives.<sup>1</sup>

#### *Relocation Incentives*

Under 5 U.S.C. 5753 and 5 CFR part 575, subpart B, an agency may pay a relocation incentive to a current employee who must relocate to accept a General Schedule or other covered position in a different geographic area (permanently or temporarily) if the agency determines that the position is likely be difficult to fill in the absence

<sup>1</sup> Office of Personnel Management. "Fact Sheet: Recruitment Incentives." <https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/recruitment-incentives/>.

of an incentive. (See 5 CFR 575.205(a).) A relocation incentive may be paid only when the employee's rating of record under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent. (See 5 CFR 575.205(c).) Like a recruitment incentive, a relocation incentive may not exceed 25 percent of the employee's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be raised to up to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. The incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final lump-sum payment upon completion of the service period, or in a combination of these methods. (See 5 CFR 575.209.)

Before paying a relocation incentive, an agency must establish a relocation incentive plan. A relocation incentive plan must generally address the same information required in a recruitment incentive plan, as described above. (See 5 CFR 575.207.)

For each relocation incentive authorized, an agency must document in writing the justification for approving the incentive that addresses factors similar to those needed for recruitment incentive authorizations, as described above. The agency must also document that the worksite of the new position is in a different geographic area than the previous position. The determination to pay a relocation incentive must be made before the employee enters on duty in the position at the new duty station. The authorized agency official must review and approve the relocation incentive determination before the agency pays the incentive to the employee. (See 5 CFR 575.207(b), 575.208.) Agency determinations to pay a relocation incentive must generally be made on a case-by-case basis. (See 5 CFR 575.208.) Payment of a relocation incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B. (See 5 CFR 575.209(e).)

The factors an agency may consider in determining that the new position is likely to be difficult to fill in the absence of a relocation incentive are also similar to those that may be considered for recruitment incentives. (See 5 CFR 575.206(b).) The use of relocation incentives can help agencies expand applicant pools to include more

diverse candidates. Before receiving a relocation incentive, an employee must sign a written agreement to complete a specified period of employment with the agency at the new duty station (not to exceed 4 years). The relocation incentive service agreement requirements and payment termination provisions are consistent with those required for recruitment incentives, except there is no minimum service period required. (See 5 CFR 575.210 and 575.211.) OPM has provided a fact sheet with additional information on relocation incentives.<sup>2</sup>

#### *Recruitment and Relocation Incentive Waivers*

Agencies currently have the authority to approve a recruitment or relocation incentive without OPM approval for payments of up to 25 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 4 years or 100 percent of annual basic pay). However, OPM approval is required when an agency would like to exceed this payment limit to make larger payments over shorter service agreement lengths. Under a recruitment or relocation incentive waiver, agencies can approve a recruitment or relocation incentive of up to 50 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 100 percent of annual basic pay). (See 5 CFR 575.109(c) and 575.209(c).)

For example, an OPM waiver is not required for an agency to pay a recruitment or relocation incentive of up to 25 percent of annual basic pay for a 1-year service agreement, 50 percent of basic pay for a 2-year service agreement, or 100 percent of basic pay for a 4-year service agreement. An OPM waiver currently is required for an agency to pay a recruitment or relocation incentive of 50 percent of annual basic pay for a 1-year service agreement or 100 percent of annual basic pay for a 2-year service agreement. OPM has provided a fact sheet on calculating maximum recruitment and relocation incentives for service periods of various lengths.<sup>3</sup>

<sup>2</sup> Office of Personnel Management. "Fact Sheet: Relocation Incentives." <https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/relocation-incentives/>.

<sup>3</sup> Office of Personnel Management. "Fact Sheet: Calculating Maximum Recruitment and Relocation Incentives for Service Periods of Various Lengths." <https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/calculating-maximum-recruitment-and-relocation-incentives-for-service-periods-of-various-lengths/>.

A waiver request must include a description of the critical agency need the proposed recruitment or relocation incentive would address. 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). To assist agencies in developing waiver requests, OPM has provided waiver request templates for recruitment incentives<sup>4</sup> and relocation incentives.<sup>5</sup>

The law, 5 U.S.C. 5754, does not permit the expansion of the waiver authority for retention incentives found at 5 CFR part 575, subpart C. Therefore, retention incentives are not included in this proposed rule.

### Proposed Changes to Recruitment Incentive Rules

In 5 CFR part 575, subpart A, OPM is proposing to amend the current regulations as follows:

- Revise 5 CFR 575.106(a)(4) to provide an authorized agency official with sole and exclusive discretion, subject only to OPM review and oversight, to waive the limitation on the maximum amount of a recruitment incentive under 5 CFR 575.109(c).
- Require agencies at proposed 5 CFR 575.107(a) to designate the officials with authority to waive the recruitment incentive payment limitation in their recruitment incentive plans.
- Amend the incentive approval level provisions in 5 CFR 575.107(b)(1) to state that if a determination to pay a recruitment incentive includes a waiver of the payment limitation under 5 CFR 575.109(c), the official who is designated in the agency's plan under 5 CFR 575.107(a) must approve the determination.
- Revise 5 CFR 575.107(b)(2) to state that when necessary to make a timely offer of employment, an authorized agency official may authorize an official who is not lower than a candidate's supervisor to offer a recruitment incentive to a candidate without further review or approval in any amount within a pre-established range up to the normal payment limitation in 5 CFR

575.109(b) or a higher cap if the agency has approved a waiver to the normal payment limitation under 5 CFR 575.109(c).

- Amend 5 CFR 575.109(c)(1) to provide the conditions under which an authorized agency official would be able to waive the payment limitation in 5 CFR 575.109(b) for an employee or group of employees based on a critical agency need.
- Require in proposed 5 CFR 575.109(c)(2) that waiver determinations be made in writing.
- Delete 5 CFR 575.109(c)(2)(iii)–(v) to eliminate redundancy because those requirements are covered by 5 CFR 575.109(c)(2)(ii).
- Amend 5 CFR 575.110(a) to remove the minimum 6-month required service period for recruitment incentives. Under the proposed rule, a recruitment incentive service agreement could be any length up to 4 years, consistent with the current allowable service agreement lengths for relocation incentives. For example, this would allow an agency to determine that a summer internship position is likely to be difficult to fill and authorize a recruitment incentive for an intern with a 3-month service agreement.

### Proposed Changes to Relocation Incentive Rules

In 5 CFR part 575, subpart B, OPM is proposing to amend the current regulations as follows:

- Revise 5 CFR 575.206(a)(4) to provide an authorized agency official with sole and exclusive discretion, subject only to OPM review and oversight, to waive the limitation on the maximum amount of a relocation incentive under 5 CFR 575.209(c).
- Require agencies at proposed 5 CFR 575.207(a) to designate the officials with authority to waive the relocation incentive payment limitation in their relocation incentive plans.
- Amend 5 CFR 575.207(b)(1) to state that if a determination to pay a relocation incentive includes a waiver of the payment limitation under 5 CFR 575.209(c), the official who is designated in the agency's plan under 5 CFR 575.207(a) must approve the determination.
- Revise 5 CFR 575.209(c)(1) to provide the conditions under which an authorized agency official may waive the payment limitation in 5 CFR 575.209(b) for an individual or group of employees based on a critical agency need.
- Require in proposed 5 CFR 575.209(c)(2) that waiver determinations be made in writing.

- Delete 5 CFR 575.209(c)(2)(iii)–(v) to eliminate redundancy because those requirements are covered by 5 CFR 575.209(c)(2)(ii).

### Other Changes

OPM is proposing to revise several sections to use gender neutral language. These changes are contained at 5 CFR 575.102, 5 CFR 575.110(f), 5 CFR 575.111(e), 5 CFR 575.111(f), 5 CFR 575.210(f), 5 CFR 575.211(e), and 5 CFR 575.211(f).

### Expected Impact of This Proposed Rule

#### A. Statement of Need

OPM serves as the chief human resources agency and personnel policy manager for the Federal Government. OPM provides human resources leadership and support to Federal agencies and helps the Federal workforce achieve their goals as they serve the American people. OPM oversees merit-based and inclusive hiring into the civil service, directs human resources and employee management services, administers retirement benefits, manages health insurance and insurance programs, and manages personnel vetting policies and processes.

As noted in OPM's FY 2022–2026 Strategic Plan,<sup>6</sup> “We will promote a diverse, equitable, inclusive, and accessible Federal workforce based on merit; develop a strategic vision for the Federal Government to prepare for the future of work; support Federal agencies to attract early career talent; and equip current and future Federal workers with the ability to build new skills over time to adapt to a rapidly changing world.”

In its March 2021 report,<sup>7</sup> the National Academy of Public Administration (NAPA) recommended that OPM adopt a more decentralized and risk-based approach to executing its transactional approval and oversight responsibilities. Specifically, NAPA recommended that OPM delegate, to the maximum extent possible, decision-making authorities to agencies, and conduct cyclical reviews to verify that appropriate actions were taken. NAPA's Rec. 2.5 was incorporated into OPM's Strategic Plan as Objective 4.2, which reads as follows: “Increase focus on Governmentwide policy work by

<sup>4</sup> Office of Personnel Management. “Recruitment Incentive Waiver Template.” <https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/recruitment-incentive-waiver-template.pdf>.

<sup>5</sup> Office of Personnel Management. “Relocation Incentive Waiver Template.” <https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/relocation-incentive-waiver-template.pdf>.

<sup>6</sup> Office of Personnel Management. “Strategic Plan Fiscal Years 2022–2026.” <https://www.opm.gov/about-us/strategic-plan/03454-fy2022-2026-strategicplan-lookbook-508pdf.pdf>.

<sup>7</sup> National Academy of Public Administration. “Elevating Human Capital: Reframing the U.S. Office of Personnel Management's Leadership Imperative” <https://www.volckeralliance.org/sites/default/files/attachments/OPM-Final-Report-National-Academy-of-Public-Administration.pdf>.

shifting more low-risk delegations of authorities to agencies.” Further, Objective 4.6 is to streamline Federal human capital regulations and guidance to reduce administrative burden and promote innovation while upholding merit system principles.

Permitting agencies to review and approve payment limit waivers at the agency level will reduce administrative burden on agencies and increase the efficiency of using recruitment and relocation incentives. This will allow agencies to move more quickly in hiring new employees and relocating those who are moving into positions that are likely to be difficult to fill. Such efficiency could be especially helpful in emergency or other critical situations in which recruiting new employees or relocating current employees rapidly is necessary. Also, with increases in the number of retirement-eligible employees, recruiting early career and experienced talent to the Federal workforce is a high priority. Using recruitment incentives can be a useful tool in achieving this goal.

### B. Impact

It is important to understand that waivers to the normal payment limitations do not alter the maximum total amount of a recruitment or relocation incentives that may be paid to an individual employee. Agencies have the authority to approve a recruitment or relocation incentive for payments of up to 25 percent of an employee’s annual rate of basic pay times the number of years in a service agreement, not to exceed 4 years or 100 percent of annual basic pay. With a waiver, agencies can approve a recruitment or relocation incentive of up to 50 percent of an employee’s annual rate of basic pay times the number of years in a service agreement, but still not to exceed 100 percent of annual basic pay. Therefore, the total incentive paid under a waiver continues to be limited to 100 percent of the employee’s annual basic pay, but the incentive may be paid over 2 years rather than 4 years.

Section 101(a) of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108–411, October 30, 2004) established significantly enhanced recruitment, relocation, and retention incentive authorities that provided Federal agencies with the flexibility to use such incentives in more strategic ways to help the Federal Government improve its competitiveness in recruiting and maintaining a high quality workforce. The enhancements provided by the Act included the authority to waive the normal cap on

recruitment and relocation incentives because of a critical agency need and provided authority to pay higher amounts over shorter periods of time (not to exceed a total of 100 percent of the employee’s starting salary). The implementing regulations<sup>8</sup> required OPM approval to waive the recruitment and relocation incentive limits.

Although this waiver authority was effective upon publication of the implementing regulations on May 13, 2005, OPM did not receive any agency requests for recruitment or relocation waivers until 2008. Since that time, OPM has approved 15 recruitment incentive waivers for 6 agencies and 11 relocation incentive waivers for 4 agencies. OPM has approved waivers for healthcare, cybersecurity, and other mission-critical occupations. OPM-approved waivers provide agencies the discretionary authority to use a higher recruitment or relocation incentive payment limit for the covered position(s) and employee(s). An agency with an OPM-approved incentive waiver is responsible for documenting in writing the justification for paying each incentive authorized for an employee under the waiver and obtaining approval from the appropriate authorized agency official.

OPM does not know how agencies would use the additional flexibility provided by this proposed change. It is possible that agencies would approve more recruitment and relocation incentive waivers if they are not required to go through the process of submitting a waiver request to OPM. However, the criteria for approval will not be changing, so agencies will still need to determine that the situation meets the critical need and other requirements for approving a waiver. In other words, approval of a waiver is not automatic and agencies will need to use discretion in granting waiver requests. In addition, agencies will need to make determinations about whether they have funds available in their budgets to provide waivers. The use of discretionary pay flexibilities such as recruitment and relocation incentives may be limited by agency budgets.

As with the waiver authority, OPM does not know how agencies would use the additional flexibility of utilizing recruitment incentive service agreements of less than 6 months. Agencies do not report data to OPM on the length of the service agreements they authorize. Since the amount of the maximum recruitment incentive is based on the length of the service period, an agency would be limited in

how much of an incentive they could authorize. For example, under the normal payment limitations, the maximum recruitment incentive that could be paid for a 3-month service period is 6.25 percent (.25 (25 percent) × .25 (3 months or ¼ of 1 year) = 6.25 percent) of the employee’s annual rate of basic pay at the beginning of the service period. Under a waiver, the maximum recruitment incentive that could be paid for a 3-month service period is 12.5 percent (.50 (50 percent) × .25 (3 months or ¼ of 1 year) = 12.5 percent) of the employee’s annual rate of basic pay at the beginning of the service period.

### C. Regulatory Alternatives

An alternative to this proposed rule is to continue to require agencies to request approval from OPM when they seek waiver of the normal recruitment and relocation payment limitations. OPM would continue to review agency requests and grant waivers if the regulatory criteria are met. However, this slows down the approval process for agencies that have a critical need to recruit or relocate employees and need to act quickly.

Another alternative would be to expand the authority to waive the normal recruitment and relocation payment limitations, but require higher approval levels within the agency. OPM believes agencies are in the best position to decide at what level to delegate this authority within their agency.

Also, OPM could expand the agency waiver authority, but require additional approval criteria. Agencies may include additional approval criteria in their agency plan. OPM doesn’t believe it is necessary to require agencies to use additional approval criteria.

Finally, OPM could expand the agency waiver authority, but institute special reporting requirements for the use of the new waiver authority. Agencies are required to report to OPM’s central data system when they authorize a waiver of the normal recruitment or relocation incentive payment limitations using legal authority code VPO. OPM doesn’t believe additional reporting requirements are necessary.

Regarding the amendment of the service agreement requirement for recruitment incentives, possible alternatives include maintaining the current 6-month minimum service agreement or reducing it to a lesser amount (e.g., 3 months). OPM believes agencies are in the best position to decide the appropriate length for a recruitment incentive service agreement.

<sup>8</sup> 70 FR 25732, May 13, 2005.

#### D. Costs

This proposed rule would affect the operations of more than 80 Federal agencies—ranging from cabinet-level departments to small independent agencies—that have employees covered by the recruitment and relocation incentive regulations. OPM estimates that this rule would require individuals employed by these agencies to spend time updating agency policies and procedures as a result of the proposed regulations. For this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2023 for GS–14, step 5, from the Washington, DC, locality pay table (\$150,016 annual locality rate and \$71.88 hourly locality rate). OPM assumes the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$143.76 per hour.

To comply with the regulatory changes in the proposed rule, affected agencies would need to review the rule and update their policies and procedures. OPM estimates that, in the first year following publication of a final rule, this would require an average of 160 hours of work by employees with an average hourly cost of \$143.76 per hour. This would result in estimated costs in that first year of implementation of about \$23,000 per agency, and about \$2.7 million Governmentwide. There are costs associated with administering recruitment and relocation incentives, but not necessarily an increase in administrative costs for agencies that are already using these pay flexibilities.

#### E. Benefits

Permitting agencies to review and approve waivers at the agency level will reduce administrative burden on agencies and increase the efficiency of using recruitment and relocation incentives. This will allow agencies to move more quickly in approving incentives when hiring new employees and relocating those who are moving into positions that are likely to be difficult to fill. Such efficiency could be especially helpful in emergency or other urgent situations in which recruiting new employees or relocating current employees rapidly is necessary. Also, with increases in the number of retirement-eligible employees, recruiting early career and experienced talent to the Federal workforce is a high priority. Providing agencies with more flexibility in implementing recruitment incentives by permitting greater latitude in determining service agreement

lengths and payment limits can be a useful tool in achieving this goal.

#### F. Request for Comments

OPM requests comments on the implementation and impacts of this proposed rule. Such information will be useful for better understanding the effect of these regulations on recruitment and relocation incentives. The type of information in which OPM is interested includes, but is not limited to, the following:

- Are there additional ways that the Federal Government can be a model employer with respect to recruitment and relocation incentives?
- How can the Federal Government use recruitment and relocation incentives more effectively and efficiently?
- OPM has provided a fact sheet addressing oversight and accountability for these incentives.<sup>9</sup> Are there any additional ways in which the Federal Government can provide better oversight and accountability of recruitment and relocation incentives?

#### E.O. 12866, 13563, 14094, Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, and Executive Order 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$200 million or more in any one year. While this proposed rule does not reach the economic effect of \$200 million or more, OMB has designated this rule as a “significant regulatory action” under Executive Order 14094.

#### Regulatory Flexibility Act

The Director of OPM certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### E.O. 13132, Federalism

This proposed rule will not have substantial direct effects on the States,

<sup>9</sup> Office of Personnel Management. “Fact Sheet: Oversight and Accountability.” <https://www.opm.gov/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/fact-sheets/oversight-and-accountability/>.

on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### E.O. 12988, Civil Justice Reform

This proposed rule meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

#### Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

#### Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### List of Subjects in Title 5 CFR Part 575

Government employees, Wages.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 575 as follows:

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

- 1. The authority citation for part 575 continues 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

- 2. In § 575.102, revise paragraph (3) of the definition “Newly appointed” to read as follows:

#### § 575.102 Definitions.

\* \* \* \* \*

*Newly appointed* \* \* \* \*

(3) An appointment of an individual in the Federal Government when the individual’s 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:

\* \* \* \* \*

■ 3. In § 575.106, revise paragraph (a)(4) to read as follows:

**§ 575.106 Authorizing a recruitment incentive.**

(a) \* \* \*

(4) Waive the limitation on the maximum amount of a recruitment incentive under § 575.109(c); and

\* \* \* \* \*

■ 4. In § 575.107, revise paragraphs (a)(1) and (b) to read as follows:

**§ 575.107 Agency recruitment incentive plan and approval levels.**

(a) \* \* \*

(1) The designation of officials with authority to—

(i) Review and approve payment of recruitment incentives (subject to paragraph (b) of this section), including the circumstances under which an official has the authority to approve payment without higher-level approval under paragraph (b)(2) of this section;

(ii) Waive the recruitment incentive payment limitation under § 575.109(c) (subject to the approval requirements in paragraph (b) of this section); and

(iii) Waive the repayment of a recruitment incentive under § 575.111(h);

\* \* \* \* \*

(b) (1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a recruitment incentive to a newly appointed employee, unless there is no official at a higher level in the agency. If a determination includes a waiver of the payment limitation in § 575.109(c), the official who is designated in the agency's plan under § 575.107(a) to approve waivers must approve the determination. The authorized agency official must review and approve the recruitment incentive determination before the agency may pay the incentive to the employee.

(2) When necessary to make a timely offer of employment, an authorized agency official may establish criteria in advance for offering recruitment incentives to newly-appointed employees and may authorize an official who is not lower than a candidate's supervisor to use these criteria to offer a recruitment incentive to a candidate without further review or approval in any amount within a pre-established range up to—

(i) The normal payment limitation in § 575.109(b); or

(ii) A higher cap if the agency has approved a waiver to the normal payment limitation under § 575.109(c).

\* \* \* \* \*

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

**§ 575.109 Payment of recruitment incentives.**

\* \* \* \* \*

(c) (1) An authorized agency official may 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.

(2) Waiver determinations must be made in writing and include—

(i) A description of the critical agency need the recruitment incentive would address;

(ii) The documentation required by § 575.108; and

(iii) Any other information pertinent to the case at hand.

\* \* \* \* \*

■ 6. In § 575.110, revise paragraphs (a) and (f) to read as follows:

**§ 575.110 Service agreement requirements.**

(a) Before paying a recruitment 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). An authorized agency official must establish the criteria for determining the length of a service period. The service period may not exceed 4 years.

\* \* \* \* \*

(f) The service agreement may include any other terms or conditions that, if violated, will result in termination of

the service agreement under § 575.111(b). For example, the service agreement may specify the employee's work schedule, type of position, and the duties the employee is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

■ 7. In § 575.111, revise paragraphs (e) and (f) to read as follows:

**§ 575.111 Termination of a service agreement.**

\* \* \* \* \*

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to all recruitment incentive payments that are attributable to completed service and to retain any portion of a recruitment incentive payment the employee received that is attributable to uncompleted service.

(f) Except as provided in paragraph (j) of this section, if an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain recruitment incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received recruitment incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the recruitment incentive service agreement. If the employee received recruitment incentive payments in excess of the amount that would be attributable to the completed portion of the service period, the employee must repay the excess amount, except when an authorized agency official waives the requirement to repay the excess amount under paragraph (h) of this section.

\* \* \* \* \*

**Subpart B—Relocation Incentives**

■ 8. In § 575.206, revise paragraph (a)(4) to read as follows:

**§ 575.206 Authorizing a relocation incentive.**

(a) \* \* \*

(4) Waive the limitation on the maximum amount of a relocation incentive under § 575.209(c); and

\* \* \* \* \*

■ 9. In § 575.207, revise paragraphs (a)(1) and (b)(1) to read as follows:

**§ 575.207 Agency relocation incentive plan and approval levels.**

(a) \* \* \*

(1) The designation of officials with authority to—

(i) Review and approve payment of relocation incentives (subject to paragraph (b) of this section);

(ii) Waive the relocation incentive payment limitation under § 575.209(c) (subject to the approval requirements in paragraph (b) of this section); and

(iii) Waive the repayment of a relocation incentive under § 575.211(h);

\* \* \* \* \*

(b) (1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a relocation incentive, unless there is no official at a higher level in the agency. If a determination includes a waiver of the payment limitation in § 575.209(c), the official who is designated in the agency's plan under § 575.207(a) to approve waivers must approve the determination. The authorized agency official must review and approve the relocation incentive determination before the agency pays the incentive to the employee.

\* \* \* \* \*

■ 10. In § 575.209, revise paragraph (c) to read as follows:

**§ 575.209 Payment of relocation incentives.**

\* \* \* \* \*

(c) (1) An authorized agency official may waive the limitation in paragraph (b)(1) of this section for an employee (or group of employees, if the case-by-case determination is waived under the conditions in § 575.208(b)) based on a critical agency need. The authorized agency official must determine that the competencies required for the position 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 relocation incentive payments paid to an employee in a service period may not exceed 50 percent of the annual rate of basic pay of the employee 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 relocation incentive payments exceeding 100 percent of the employee's annual rate of basic pay at the beginning of the service period.

(2) Waiver determinations must be in writing and include—

(i) A description of the critical agency need the relocation incentive would address;

(ii) The documentation required by § 575.208;

and

(iii) Any other information pertinent to the case at hand.

\* \* \* \* \*

■ 11. In § 575.210, revise paragraph (f) to read as follows:

**§ 575.210 Service agreement requirements.**

\* \* \* \* \*

(f) The service agreement may include any other terms or conditions that, if violated, will result in termination of the service agreement. For example, the service agreement may specify the employee's work schedule, type of position, and the duties the employee is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

■ 12. In § 575.211, revise paragraphs (e) and (f) to read as follows:

**§ 575.211 Termination of a service agreement.**

\* \* \* \* \*

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to all relocation incentive payments attributable to completed service and to retain any portion of a relocation incentive payment the employee received that is attributable to uncompleted service.

(f) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain relocation incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received relocation incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the relocation incentive service agreement. If the employee received relocation incentive payments in excess of the amount that would be attributable to the completed portion of the service period, the employee must repay the excess amount, except when an authorized agency official waives the requirement

to repay the excess amount under paragraph (h) of this section.

\* \* \* \* \*

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**DEFENSE NUCLEAR FACILITIES SAFETY BOARD****10 CFR Part 1703**

[Docket No. DNFSB–2024–01]

**Freedom of Information Act Fee Schedule****AGENCY:** Defense Nuclear Facilities Safety Board.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (DNFSB or Board) is proposing to revise its Freedom of Information Act (FOIA) fee schedule and to make conforming amendments to two related provisions of its FOIA regulations.

**DATES:** To be considered, comments must be submitted by December 15, 2023.

**ADDRESSES:** You may submit written comments by either of the following methods:

- *Email:* Send comments to [comment@dnfsb.gov](mailto:comment@dnfsb.gov). Please include “FOIA Fee Revision” in the subject line of your email.

- *Mail or Hand Delivery:* Send hard copy comments to the Defense Nuclear Facilities Safety Board, Attn: General Manager, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901.

**FOR FURTHER INFORMATION CONTACT:** Tayrn L. Gude, Director, Division of Operational Services, Office of the General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (202) 694–7000 (Toll Free (800) 788–4016).

**SUPPLEMENTARY INFORMATION:****I. Background**

The Freedom of Information Act requires Federal agencies to which it applies to publish a schedule of the costs that they may charge for the expenditures incurred in responding to requests for their records. Guidelines published by the Office of Management and Budget assist agencies in meeting that requirement and provide a structure for its consistent implementation across the Executive Branch, 5 U.S.C. 552(a)(4)(A)(i), and “Uniform Freedom of Information Act Fee Schedules and Guidelines,” 52 FR 10012 (March 27, 1987), Revised 85 FR 81955 (Dec. 17,