

(c) Availability pay shall be used in computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552.

(d) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

[59 FR 66151, Dec. 23, 1994]

**§ 550.187 Transitional provisions.**

(a) Except as provided in paragraph (b) of this section, not later than the first day of the first pay period beginning on or after October 30, 1994, each criminal investigator qualified to receive availability pay and the appropriate supervisory officer (as designated by the agency head or authorized designee) shall make an initial certification to the head of the agency that the investigator is expected to meet the substantial hours requirement in § 550.183. The head of an agency may prescribe procedures necessary to administer this paragraph.

(b)(1) In the case of criminal investigators who are employed in offices of Inspectors General and who, immediately prior to September 30, 1994, were not receiving administratively uncontrollable overtime pay, or were receiving such pay at a rate of less than 25 percent, the employing office may delay implementation of availability pay; however, availability pay shall be implemented (in accordance with §§ 550.181 through 550.186) no later than—

(i) September 30, 1995, for investigators who are not receiving administratively uncontrollable overtime pay; or

(ii) The first day of the last pay period ending on or before September 30, 1995, for investigators who were receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994.

(2) A criminal investigator who is employed in an Inspector General office and was receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994, shall continue to receive at least that rate or a higher rate, if increased by the employing agency, until the availability pay

provision is implemented for the position (no later than as provided in paragraph (b)(1)(ii) of this section).

(3) Implementation of availability pay for criminal investigators under paragraph (b)(1) of this section shall be in accordance with the requirements and conditions set forth in §§ 550.181 through 550.186. For qualified investigators, an initial certification shall be made, consistent with paragraph (a) of this section.

[59 FR 66151, Dec. 23, 1994]

**Subpart B—Advances in Pay**

**AUTHORITY:** 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

**SOURCE:** 56 FR 12837, Mar. 28, 1991, unless otherwise noted.

**§ 550.201 Purpose.**

This subpart provides regulations to implement 5 U.S.C. 5524a which provides that the head of each agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

**§ 550.202 Definitions.**

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

*Employee* means an individual employed in or under an agency who is appointed to a position with a scheduled tour of duty.

*Head of agency* means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

*Newly appointed* means—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) A new appointment following a break in service of at least 90 days; or

(c) A permanent appointment in the competitive service following a period of leave without pay for at least 90 days received after termination of employment in a cooperative work-study

program under a Schedule B appointment made in accordance with §213.3202 of this chapter, provided such employee has fully repaid any former advance in pay under § 550.205 of this part.

*Offset* or *setoff* means repayment in installments of an advance in pay by payroll deductions or an administrative offset under subpart K of this part to collect a debt under 5 U.S.C. 5514 from an indebted Government employee.

*Pay period* means the pay period established by an agency for an employee under 5 U.S.C. 5504.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay under 5 U.S.C. 5545(c), availability pay under 5 U.S.C. 5545a, night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

[56 FR 12837, Mar. 28, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 58 FR 41625, Aug. 5, 1993; 59 FR 66153, Dec. 23, 1994; 61 FR 3543, Feb. 1, 1996]

#### § 550.203 Advances in pay.

(a) The head of an agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to an employee who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any allotments or deductions that would normally be deducted from the employee's first regular paycheck.

(c) An advance in pay may be made to an employee no earlier than the date of appointment with the agency and no later than 60 days after the date of appointment.

(d) An advance in pay under this subpart may not be made to any employee

when an agency expects to make an advance in pay to the same employee under 5 U.S.C. 5927 within 2 pay periods after the employee's appointment.

(e) An advance in pay may not be made to the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

[56 FR 12837, Mar. 28, 1991; 56 FR 40360, Aug. 14, 1991; 58 FR 41625, Aug. 5, 1993]

#### § 550.204 Agency procedures.

(a) Each agency shall establish written procedures governing advance payments. These procedures shall include—

(1) Criteria to be considered before approval or denial of employee requests for advance payments;

(2) Criteria to be considered before waiving all or part of advance payments; and

(3) Processing and accounting procedures governing advance payments.

(b) Before making an advance payment, an agency shall require that the employee sign an agreement to repay to the Federal Government any amount for which repayment has not been waived by the agency head under § 550.206 of this part.

(c) Before making an advance payment, an agency shall provide the following information to the employee in writing:

(1) A statement indicating how the advance in pay will be recovered from the employee by the Federal Government, either in installments under agency procedures for payroll deductions or by salary offset procedures under subpart K of this part;

(2) The total amount of the advance in pay, the total number of pay periods for repayment of the advance in pay, and the amount that will be deducted from the pay of the employee by payroll deductions or salary offset for each pay period;

(3) A statement indicating that the employee may prepay all or part of the balance of the advance payment at any time before the money is due, including instructions as to where and how such prepayments may be made.

(4) A statement indicating that the amount of the advance in pay not yet repaid by an employee or waived by the

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agency head is due and must be repaid by the employee if the employee transfers to another agency or the individual's employment with the agency is terminated for any reason; and

(5) A statement indicating that any amount of the remaining balance of the advance in pay that has not been waived or repaid by the employee on transfer or termination for any reason must be recovered by salary offset under subpart K of this part and/or by such other method as is provided by law.

(d) The head of an agency may establish procedures under which an employee is permitted to make allotments out of an advance in pay for such purposes as the head of the agency considers appropriate.

[56 FR 12837, Mar 28, 1991, as amended at 58 FR 41625, Aug. 5, 1993]

**§ 550.205 Recovery of advances in pay.**

(a) Unless repayment is waived in whole or in part under § 550.206 of this part, an agency shall recover an advance in pay by installments under agency procedures for payroll deductions or by salary offset procedures established under subpart K of this part. An employee may prepay all or part of the remaining balance of an advance in pay at any time before payments are due.

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 14 pay periods beginning on the date the advance in pay is made to the employee under § 550.203 of this part. If a longer period for recovery is necessary to avoid exceeding the limitation on deductions described in § 550.1104(i) of this part, recovery may be accomplished under salary offset procedures established under subpart K of this part. Upon written request, an employee may elect a recover period of less than 14 pay periods.

(c) If an employee transfers to another agency or employment with an agency is terminated for any reason, the remaining balance of an advance in pay not yet repaid is due and must be repaid to the Federal Government unless repayment is waived in whole or in part under § 550.206 of this part.

(d) Any remaining balance of an advance in pay that has not been waived under § 550.206 of this part or repaid by an employee upon transfer or termination of employment must be recovered by an agency using procedures for salary offset under subpart K of this part and/or by such other method as is provided by law.

[56 FR 12837, Mar 28, 1991, as amended at 58 FR 41625, Aug. 5, 1993]

**§ 550.206 Waiver of repayment.**

The head of an agency may waive in whole or in part a right of recovery of an advance payment under 5 U.S.C. 5524a and this subpart if he or she determines that recovery would be against equity and good conscience or against the public interest under criteria established by the agency.

**Subpart C—Allotments and Assignments From Federal Employees**

AUTHORITY: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

SOURCE: 46 FR 2325, Jan. 9, 1981, unless otherwise noted.

DEFINITIONS

**§ 550.301 Definitions.**

In this subpart:

*Agency* means an Executive agency as defined by section 105 of Title 5, United States Code.

*Allotment* means a recurring specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

*Allottee* means the person or institution to whom an allotment is made payable.

*Allotter* means the employee from whose pay an allotment is made.

*Association of management officials and/or supervisors* means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

*Combined Federal Campaign* means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of