

§ 575.309

5 CFR Ch. I (1–1–14 Edition)

(b) For each determination to pay a retention incentive under this subpart, an agency must document in writing—

(1) The basis for determining that the unusually high or unique qualifications of the employee (or group of employees) or a special need of the agency for the employee's (or group of employees') services makes it essential to retain the employee(s);

(2) The basis for determining that the employee (or a significant number of employees in a group) would be likely to leave the Federal service in the absence of a retention incentive; and

(3) The basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period.

§ 575.309 Payment of retention incentives.

(a) An authorized agency official must determine the criteria for determining the amount of a retention incentive. An agency must establish a single retention incentive rate for each individual or group of employees that is expressed as a percentage of the employee's rate of basic pay. Except as provided in paragraph (e) of this section, a retention incentive rate may not exceed—

(1) 25 percent, if authorized for an individual employee; or

(2) 10 percent, if authorized for a group or category of employees.

(b) An agency may pay a retention incentive in—

(1) Installments after the completion of specified periods of service; or

(2) A single lump-sum payment after completion of the full service period.

(c)(1) An installment payment is derived by multiplying the rate of basic pay the employee earned in the installment period by a percentage not to exceed the incentive percentage rate established for the employee under paragraph (a) of this section. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee has a service agreement that provides for a retention incentive installment payment after completion of 6 pay periods of service at the full percentage rate established for the employee. The employee earns \$15,000 during the 6 pay

periods of service (\$2,500 biweekly rate of basic pay × 6). Upon completion of that service period, the employee will receive the accrued retention incentive installment payment of \$1,500 ($\$15,000 \times .10$).

(2) If the retention incentive installment payment percentage is less than the full percentage rate established for the employee under paragraph (a) of this section, any accrued portion of the retention incentive that is not paid as an installment payment during the service period must be paid as part of a final installment payment to the employee after completion of the full service period under the terms of the service agreement established under § 575.310. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee's service agreement provides for a 7 percent retention incentive installment payment after completion of 6 pay periods of service. The employee earns \$15,000 during the 6 pay periods of service (\$2,500 biweekly rate of basic pay × 6). Upon completion of that installment period, the employee accrues a retention incentive installment payment of \$1,500 ($\$15,000 \times .10$). However, under the terms of the service agreement, the employee will receive a \$1,050 retention incentive installment payment ($\$15,000 \times .07$). The agency must pay the accrued but unpaid portion of the retention incentive payment of \$450 ($\$1,500 - \$1,050$) as a final lump-sum payment upon completion of the full service period required by the service agreement.

(3) An agency may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period for which the retention incentive is being paid.

(d) A retention incentive payment paid as a single lump-sum payment upon completion of the full service period required by the service agreement is derived by multiplying the retention incentive percentage rate established under paragraph (a) of this section by the total basic pay the employee earned during the full service period. For example, an agency establishes a retention incentive percentage rate of

10 percent for an employee. The employee has a service agreement that provides for a single lump-sum retention incentive payment after completion of the full service period required by the service agreement (*i.e.*, 26 pay periods). The employee earns \$65,000 during the 26 pay periods of service (\$2,500 biweekly rate of basic pay × 26). Upon completion of the full service period, the employee will receive a single lump-sum retention incentive payment of \$6,500 ($\$65,000 \times .10$).

(e)(1) An authorized agency official may request that OPM waive the limitation in paragraph (a) of this section and permit the agency to pay an individual employee or group of employees a retention incentive of up to 50 percent of the employee's basic pay based on a critical agency need. In addition to the determination required by § 575.308, the authorized agency official must determine that the employee's (or group of employees') unusually high or unique qualifications (*i.e.*, competencies) 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).

(2) Waiver requests must include—

(i) A description of the employee's work requirements and responsibilities or, if requesting a group retention incentive, a description of the group or category of employees and the number of employees to be covered by the proposed retention incentive;

(ii) A description of the critical agency need the proposed retention incentive would address;

(iii) The written documentation required by § 575.308;

(iv) The proposed retention incentive percentage rate and a justification for that percentage;

(v) The timing and method of making the retention incentive payments;

(vi) The service period required; and

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

(3) OPM may require that waiver requests for groups or categories of employees be coordinated with other agencies having similarly situated employees in the same category.

(4) Notwithstanding § 575.310(f), an authorized agency official must require a signed written service agreement for any employee who may receive a higher retention incentive as a result of approval of a waiver of the maximum limit on the amount of a retention incentive under paragraph (e)(1) of this section.

(f) An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency.

(g) An agency may not commence a group or individual retention incentive service agreement or provide a group or individual retention incentive without a service agreement under § 575.310(f) for any biweekly pay period during—

(1) A period of employment established under any service agreement required for the payment of a recruitment incentive under 5 CFR part 575, subpart A, or a relocation incentive under 5 CFR part 575, subpart B, (see 5 CFR 575.205(e) regarding the authority to commence a relocation incentive service agreement during a period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving previously authorized retention incentive payments without a service agreement); or

(2) A period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving a previously authorized retention incentive without a service agreement under § 575.310(f) (including a group retention incentive with or without a service agreement).

(h) A retention incentive is not part of an employee's rate of basic pay for any purpose.

(i) Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

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