

incentive service agreement to serve 39 pay periods (546 days) and his or her annual rate of basic pay at the beginning of the service period is \$65,335. To determine the maximum extended assignment incentive payments the agency may authorize, the following calculations must be made: (1)  $\$65,335 \times .25 \text{ (25\%)} \times 1.5 \text{ years (546/365)} = \$24,501$ ; and (2)  $\$15,000 \times 1.5 \text{ years} = \$22,500$ . Thus, the employee may receive extended assignment incentive payments of up to \$24,501.

Extended assignment incentives are subject to the aggregate compensation limitation established by 5 U.S.C. 5307 and regulated in 5 CFR part 530, subpart B. They constitute "other similar payments" under paragraph (14) of the definition of "aggregate compensation" in § 530.202.

Before paying an extended assignment incentive, an agency must require the employee to sign a written service agreement to complete a specified period of additional employment with the agency in one of the covered locations. The service agreement also must specify the amount of the incentive payment, the method of paying the incentive, the conditions under which an agreement may be terminated, the requirements and procedures for the repayment of incentive payments if an employee separates prior to completion of the service period, and any other terms and conditions for receiving and retaining extended assignment incentive payments. The method of paying the incentive may include an initial lump-sum payment, equal installments at the end of specified periods throughout the service period, variable payments at the end of specified periods, a final lump-sum payment, or a combination of payment methods.

If an employee fails to fulfill the terms of the service agreement, he or she generally must reimburse the employing agency for the prorated share of any extended assignment incentive received for service not yet performed. (See § 575.513.) For example, assume an employee signed a 364-day (26 pay period) service agreement and received the full amount of a \$15,000 extended assignment incentive as an initial lump-sum payment. If the employee voluntarily separates after 20 pay periods (280 days), he or she would incur a debt equal to 23.1 percent (84/364) of the incentive, or \$3,465. The employee may keep 76.9 percent (280/364) of the incentive, or \$11,535, unless the agency imposes an additional repayment penalty for not fulfilling the terms of the service agreement, as permitted by § 575.513(e). While the

head of an agency may waive any debt owed to the Federal Government under 5 U.S.C. 5584, if warranted, waivers should be rare because the employee agreed to the repayment conditions at the time he or she signed the service agreement.

If an employee fails to complete the agreed-upon service period because of voluntary separation or transfer or another reason covered by § 575.513, and the portion of the extended assignment incentive received to date is less than or equal to the prorated share attributable to the employee's completed service, the employee will have no repayment obligation unless the agency imposes an additional repayment penalty, as permitted under § 575.513(f). However, if provided in the service agreement, the agency may have an obligation to pay an additional amount for service completed by the employee. For example, assume that an employee who signed a 364-day (26 pay period) service agreement will receive a total extended assignment payment of \$24,501 in two equal installment payments—i.e., \$12,250.50 at the end of 13 pay periods of completed service and \$12,250.50 at the end of the required service period. The employee receives the first payment of \$12,250.50 and then voluntarily separates after 20 pay periods (280 days). If the service agreement provides that the employee is entitled to receive a prorated share of the planned extended assignment incentive based on the amount of service completed, he or she would receive an additional \$6,590.77 ( $280/364 = 76.9\%$ ;  $76.9\% \times \$24,501 = \$18,841.27$ ;  $\$18,841.27 - \$12,250.50 = \$6,590.77$ ). On the other hand, if the service agreement provides that the employee would not receive any unpaid incentive amount in the event of voluntary separation from the position, then the employee would keep the \$12,250.50 he or she received but would receive no additional payment.

By law, an agency may not require repayment of an extended assignment incentive if an employee is involuntarily separated from his or her position or is involuntarily reassigned to a position stationed outside the particular area involved. Under the regulations, if such an employee has not received incentive payments equal to the prorated share of the planned incentive attributable to completed service, the agency must pay an additional incentive to make up the difference. No other additional payment may be made except as allowed by the service agreement. (See § 575.511.) Parallel rules apply to employees whose service agreement is terminated

unilaterally by the agency as described in § 575.512.

The determination to pay an extended assignment incentive must be made on a case-by-case basis for each employee. While an agency may identify targeted groups or organizational units performing functions that are deemed essential to the agency's mission for special consideration, incentive determinations must still be made on a case-by-case basis for each employee. An extended assignment incentive may not be provided to an employee who is fulfilling the requirements of a service agreement for the payment of a recruitment or relocation bonus or to an employee who is receiving a retention allowance. (See 5 CFR part 575, subparts A, B, and C.)

Under 5 U.S.C. 5757(d), OPM must consult with affected agencies and submit a report to Congress assessing the effectiveness of the extended assignment incentive authority as a strategic human resources management tool and make recommendations for any changes necessary to improve the effectiveness of the incentive authority. OPM's report is due no later than May 4, 2006, which is 3 years after the effective date of section 207 of Public Law 107-273. To assist OPM in preparing the report, the interim regulations require agencies to provide data on their use of extended assignment incentives and to evaluate the extent to which these payments improved the retention of employees for longer than their initial tour of duty. In addition, OPM, invites agencies to provide recommendations for changes necessary to improve the effectiveness of extended assignment incentives. The interim regulations require agencies to provide the requested information for the period from May 2, 2003, through December 31, 2005. Agency reports are due to OPM by February 15, 2006.

#### **Waiver of Notice of Proposed Rule Making and Delay in Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists to waive the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective upon publication in the **Federal Register**. These regulations implement section 207 of Public Law 107-273, which took effect on the first day of the first pay period beginning on or after May 2, 2003. Certain provisions cannot be applied, however, unless OPM issues implementing regulations. The waiver of the requirements for proposed rulemaking and a delay in the effective date are necessary to ensure