



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Tuesday, July 31, 2001

MEMORANDUM FOR: Human Resources Directors

FROM: The Federal Register Online via GPO Access

Subject: Repayment of Student Loans

Federal Register: July 31, 2001 (Volume 66, Number 147)]

[Rules and Regulations]

[Page 39405-39406]

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Rules and Regulations
Federal Register

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[[Page 39405]]

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 537

RIN 3206-AJ33

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 authorizing Federal agencies to repay federally insured student loans when necessary to recruit or retain highly qualified personnel.

EFFECTIVE DATES: August 30, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. Mahoney, (202) 606-0830 (FAX 202-606-0390).

SUPPLEMENTARY INFORMATION: On March 16, 2001, OPM published proposed regulations implementing provisions of Public Law 106-398. OPM is making them final with no changes. These provisions: Remove the restriction of this incentive to professional, technical, or administrative personnel; remove the limitation of this incentive to employees covered under General Schedule pay rates; broaden the types of loans which qualify under this part under the Higher Education Act of 1965 and the Public Health Service Act; require agencies to report annually to OPM on their use of this incentive; and require OPM to report annually to Congress on agencies' use of this incentive. These regulations reflect the amendments to 5 U.S.C. 5379.

The repayment authority is one of several flexibilities made available to agencies when trying to attract individuals to the Federal service, or retain highly qualified personnel.

These final regulations amend the following: Purpose, Definition of Employee, Definition of Student Loan, and Records and Reports.

Comments

OPM received comments from 3 agencies and 6 individuals.

One agency commented that the \$40,000 payment limitation is not clear, and that the final regulations should provide greater clarity as to what this limitation represents. OPM did not adopt this suggestion because we believe the language in the regulation at 5 CFR 537.106(c)(2), which reads, "a total of \$40,000 per employee", is sufficiently clear. The \$40,000 limitation is the maximum an agency may pay to any one employee. The same agency also suggested that the final regulations state whether this benefit is subject to the aggregate limitation on pay. OPM did not adopt this suggestion because that issue is outside the scope of these regulations. However, OPM is amending the questions and answers on student loan repayments on the OPM Web site to clarify that these payments are not subject to that aggregate limitation.

Another agency suggested that OPM serve as a resource for information pertaining to tax withholding and payroll related issues associated with the use of this benefit. OPM does not agree with this suggestion because we have no authority to provide guidance on tax related issues. OPM defers to the Internal Revenue Service (IRS) on tax related matters. However OPM, with input from the IRS, provides information pertaining to the tax related aspects of this benefit in our Questions and Answers. This agency also commented that the annual reporting requirements do not impose an undue burden on agencies.

A third agency suggested that the annual reporting requirement be conducted on a fiscal year basis to coincide with agency reports for other recruitment, retention, and relocation incentives. OPM agrees with this suggestion and will adopt a fiscal year reporting requirement. We will address reporting timeframes in our Questions and Answers.

One individual commented that more guidelines are needed to ensure appropriate implementation of this program and to safeguard against abuses of the program. OPM did not address this suggestion in the final regulations because we have issued accompanying Questions and Answers guidance to assist agencies with their implementation of this program.

Another individual suggested the final regulations clarify what is expected of employees after they receive this benefit. OPM has already addressed this in 5 CFR 537.107 (service agreements) and in 5 CFR 537.108 (loss of eligibility for loan repayment benefits).

Another individual suggested that OPM define the term, "highly qualified personnel" in the final regulations. OPM did not adopt this suggestion. A standard definition of "highly qualified personnel" may limit agencies in their use of this authority, as there are many ways in which an individual may be deemed highly qualified in relation to the duties they perform or the skills they possess. OPM reminds agencies that they can define the term in their agency plans for using this authority.

Finally, one individual noted the difficulties in showing that an employee would be likely to leave for employment outside the Federal service. The individual commented that proof of an offer of employment is too unrealistic and difficult to obtain, and that private sector employers are not likely to provide such proof. OPM believes the final regulations give agencies wide latitude in how they determine whether an employee may be likely to leave for employment outside the Federal service. The final regulations do not specify that proof from a private sector employer is required in order for this benefit to be used as a retention incentive.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

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.

List of Subjects in 5 CFR Part 537

Administrative practice and procedure, Government employees, Wages.

[[Page 39406]]

Office of Personnel Management.
Kay Coles James,
Director.

Accordingly, OPM amends part 537 to Title 5, Code of Federal Regulations, as follows:

PART 537--REPAYMENT OF STUDENT LOANS

1. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 5379.

2. Section 537.101 is revised to read as follows:

Sec. 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, as amended, which authorizes agencies to establish a program under which they may agree to repay (by direct payment on behalf of the employee) all or part of any outstanding federally insured student loan or loans previously taken out by a candidate to whom an offer of employment has been made, or a current employee of the agency, in order to recruit or retain highly qualified personnel.

3. In Sec. 537.102 the definitions of Employee and Student loan are revised to read as follows:

Sec. 537.102 Definitions.

* * * * *

Employee has the meaning given that term in 5 U.S.C. 2105, except it does not include an employee occupying a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character (i.e., employees serving under Schedule C appointments).

* * * * *

Student loan means--

- (a) A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; or
- (b) A health education assistance loan made or insured under part A of title VII of the Public Health Service Act, or under part E of title VIII of that Act.

4. In section 537.110 the section heading is revised and the existing text is designated as paragraph (a), and paragraph (b) is added, to read as follows:

Sec. 537.110 Records and Reports.

* * * * *

- (b) Before January 1st of each year, each agency must submit a written report to the Office of Personnel Management stating when the agency made student loan repayments on behalf of an employee during the previous fiscal year. Each report must include:
 - (1) The number of employees selected to receive this benefit;
 - (2) The job classifications of the employees selected to receive benefits under this part; and
 - (3) The cost to the Federal government for providing benefits under this part.