

**§ 537.102**

**5 CFR Ch. I (1-1-03 Edition)**

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.

[66 FR 39406, July 31, 2001]

**§ 537.102 Definitions.**

In this part:

*Agency* has the same meaning as in 5 U.S.C. 4101(1) subparagraph (A), (B), (C), (D), or (E).

*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).

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

*Service agreement* means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency of not less than 3 years, in return for payments toward a student loan previously taken out by the employee.

*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.

[66 FR 2791, Jan. 11, 2001, as amended at 66 FR 39406, July 31, 2001]

**§ 537.103 Agency loan repayment plans.**

(a) *Agency loan repayment plans.* Before repaying any student loans under this part, the head of an agency must establish a student loan repayment plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve offering student loan repayment benefits (agencies should use approval delega-

tions which are similar to those used for other recruitment and relocation incentives);

(2) The situations when the loan repayment authority may be used;

(3) Criteria that must be met or considered in authorizing loan repayments, including criteria for determining the size and timing of a payment(s);

(4) Procedures for making loan payments;

(5) A system for selecting employees to receive repayment benefits that ensures fair and equitable treatment;

(6) Requirements for service agreements (including a basis for determining the length of service to be required if greater than the statutory minimum) and provisions for recovering any amount outstanding from an employee who fails to complete the period of employment established under a service agreement and for conditions when the agency decides to waive the employee's obligation to reimburse the agency for payments made under this part; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action taken in each case. (when an employee is considered for the repayment benefit.)

(b) [Reserved]

**§ 537.104 Employee eligibility.**

In accordance with the other provisions of this part and 5 U.S.C. 5379, an agency may authorize offering loan repayments benefits to recruit or retain—

(a) Temporary employees who are serving on appointments leading to conversion to term or permanent appointments; or

(b) Term employees with at least 3 years left on their appointment; or

(c) Permanent employees; or

(d) Employees serving on excepted appointments with conversion to term, career, or career conditional appointments (including, but not limited to, Career Intern or Presidential Management Intern appointments).

**§ 537.105 Criteria for payment.**

(a) *Written determination.* Loan repayments made under this part must be based on a written determination that,

in the absence of offering loan repayment benefits, the agency would encounter difficulty either in filling the position with a highly qualified candidate, or retaining a highly qualified employee in that position. Agencies can decide for themselves who has the authority to make written determinations.

(b) *Determination for recruitment.* Each determination for recruitment purposes (including the amount to be paid) must be made before the employee actually enters on duty in the position for which he or she was recruited.

(c) *Determination for retention.* Payments authorized in order to retain an employee must be based upon a written determination that the high or unique qualifications of the employee or special need of the agency for the employee's services makes it essential to retain the employee, and that, in the absence of offering student loan repayment benefits, the employee would be likely to leave for employment outside the Federal service. This determination must be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission.

(d) *Selecting employees.* When selecting employees to receive loan repayment benefits, agencies must adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

#### **§ 537.106 Procedures for making loan repayments.**

(a) *Conditions for payments.* Payments will be at the discretion of the agency and are subject to such terms, limitations, or conditions as may be mutually agreed to in writing by the agency and employee. Payments may be applied only to the indebtedness outstanding at the time the agency and the employee enter into an agreement, and may not begin before the employee enters on duty with the agency. Student loan repayment benefits must be in addition to basic pay and any other

form of compensation otherwise payable to the employee involved. Tax withholdings must be deducted or applied at the time any payment is made. Tax withholdings may not be spread out over time. Since these tax implications could create a financial hardship for the recipient of the repayment benefit, agencies can lessen the impact of tax withholdings on an employee's paycheck in one of the following ways:

(1) Agencies can make smaller payments at periodic intervals throughout the fiscal year rather than issue payments under this part in one lump sum;

(2) Employees can write a check to the paying agency to cover their tax liability rather than have the tax liability withheld from the employee's paycheck;

(3) Agencies can deduct the amount of taxes to be withheld from the loan repayment benefit before issuing payment to the holder of the loan.

(4) Agencies are strongly advised to consult the Internal Revenue Service for further details concerning these options as well as the tax withholding implications of payments under this part.

(b) *Loans to be repaid.* Before authorizing loan repayments, an agency must verify with the holder of the loan that the employee has an outstanding student loan that qualifies for repayment under this part. Agencies should verify remaining balances to ensure that loans are not overpaid. An agency may repay more than one loan as long as the loan repayments do not exceed the limits set forth in paragraph (c) of this section.

(c) *Size of payments.* In determining the size of the loan payments, an agency should take into consideration the employee's value to the agency, and how far in advance the agency can commit funds. If budgetary considerations are an issue, agencies have the discretion to determine the repayment benefit amount given to an employee each year. This type of arrangement must be included in the written service agreement with the employee. The amount paid by the agency is subject to all the following maximum limits:

(1) \$6,000 per employee per calendar year; and

(2) A total of \$40,000 per employee.