

§ 575.303

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter;

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate); or

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a retention allowance to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

(d) When OPM finds that an agency is not paying retention allowances in conformance with the agency's retention allowance plan and the criteria established under § 575.305 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a retention allowance to such employees; or

(2) Revoke or suspend the authority granted to the the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM

5 CFR Ch. I (1–1–05 Edition)

approval be secured before paying a retention allowance to such employees.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 59 FR 11701, Mar. 14, 1994; 60 FR 33327, June 28, 1995; 64 FR 69182, Dec. 10, 1999; 66 FR 37883, July 20, 2001]

§ 575.303 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Employee means an employee in or under an agency.

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.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 60 FR 33327, June 28, 1995; 61 FR 3543, Feb. 1, 1996]

§ 575.304 Conditions for payment.

(a) An agency may not begin payment of a retention allowance during a period of employment established under any service agreement required for payment of a recruitment bonus under subpart A of this part or relocation bonus under subpart B of this part. After retention allowance payments have commenced, a relocation bonus may be paid without affecting the payment of a retention allowance.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

(c) An agency may not pay a retention allowance to an employee who is likely to leave his or her position for employment in the executive, legislative, or judicial branch of the Federal Government, whether in the same or a different agency.