

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 357

RIN 3206-AJ12

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to implement provisions authorizing Federal agencies to repay federally insured student loans when necessary to recruit or retain highly qualified professional, technical, or administrative personnel.

DATES: Written comments will be considered if received no later than August 21, 2000.

ADDRESSES: Send or deliver written comments to Carol J. Okin, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415.

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

SUPPLEMENTARY INFORMATION: Public Law 101-510 (National Defense Authorization Act for Fiscal Year 1991), section 1206, amends subchapter VII of 5 U.S.C. chapter 53, by adding a new section 5379. This section authorizes agencies to establish a program under which they may agree to repay all or part of an outstanding federally insured student loan to facilitate the recruitment or retention of highly qualified employees.

The repayment authority is one of several flexibilities made available to agencies when trying to attract individuals to the Federal service, or retain those for whom the Government has a special need. The Federal Employees Pay Comparability Act of 1990 authorized agencies to pay recruitment and relocation bonuses, retention allowances, and to set pay above the minimum step of the grade for

individuals with superior qualifications. Under Public Law 101-510, agencies may also pay for academic training leading to a degree. (Final regulations were published on May 7, 1992, at 57 FR 19515.) When considering monetary incentives as a recruitment or retention tool, agencies should carefully weigh the relative advantages and disadvantages of each of these pay authorities.

The student loan repayment law specifies that OPM prescribe regulations containing standards and requirements which would assure uniformity among agency programs.

The proposed regulations require the head of each agency to establish an internal plan that designates agency officials with authority to review and approve payments. This plan must also establish (1) agency criteria for authorizing payments and determining the amount of the payment, (2) procedures for making payments to the lender (or holder of the loan), (3) a system for selecting employees to receive loan repayment benefits that takes into account merit system principles, particularly the principle to treat employees and applicants fairly and equitably, (4) requirements for service agreements, and (5) documentation and recordkeeping requirements to support effective internal accountability and external oversight to ensure that merit principles have been followed. Outlined below are the key elements of the student loan repayment law and OPM implementation requirements.

Loans Qualifying for Repayment

The repayment authority is limited to student loans authorized by the Higher Education Act of 1965 and the Public Health Service Act. These are federally insured loans made by educational institutions or banks and other private lenders. The Higher Education Act covers guaranteed student loan programs such as Stafford Loans, Supplemental Loans for Students, PLUS loans and Consolidation Loans, as well as Perkins Loans (formerly called the National Direct Student Loan Program). Loans covered under the Public Health Service Act include the Nursing Student Loan Program, the Health Profession Student Loan Program, and the Health Education Assistance Loan Program.

Employees Covered

Student loan repayment benefits may be offered to candidates to whom an offer of employment has been made, or to current employees of the agency. However, employees who are, or will be, occupying positions outside the General Schedule are excluded from receiving repayment benefits, as are those in positions excepted from the competitive service because of their confidential, policy-determining, policy-making, or policy-advocating character. (These are generally referred to as Schedule C positions, and positions to which individuals are appointed by the President.)

Payment Limitations

Repayments from an agency to an individual employee may not exceed \$6,000 in a calendar year, with an overall lifetime maximum of \$40,000 per employee. Each agency will make direct lump sum payments on behalf of the employee to the holder of the loan. The agency will notify the holder, on behalf of the employee, that the lump sum payment is to be applied to the unpaid balance. Loan payments may not be considered as part of basic pay. Agencies may not reimburse employees for payments the employees made prior to entering into an agreement with the agency. Loan repayments are discontinued if the terms of the service agreement are not met. OPM has received a ruling from the Internal Revenue Service (IRS) addressing the employee's tax liability for the loan payments. According to the IRS, loan payments must be reported as taxable income and applicable taxes withheld at the time each or any payment is made. These withholdings could have a significant impact on an employee's paycheck during the pay period in which the loan repayment is made. Agencies should make employees aware of their tax obligation at the outset. Agencies are required to report the amount of the loan repayments, as well as any FICA related taxes or income taxes that have been withheld, on a Form W-2. Agencies should contact the IRS, Assistant Chief Counsel for Income Tax and Accounting for more specifics regarding the tax implications of loan payments. OPM will be working with IRS to develop further guidance relating to the implementation of student loan repayments prior to the approval of the final regulations.

Employee Service Requirement

An employee selected to receive repayment benefits must agree in writing to remain with the agency for a specified period, not less than 3 years, unless involuntarily separated. If used as a recruitment incentive, the specified period for service requirement begins when the employee enters on duty. If used for retention purposes, the agency must specify when the period is to begin. In either case, the service requirement must be stated in the service agreement. If the involuntary separation is for misconduct, or the employee leaves voluntarily prior to satisfying the service agreement, the employee must repay the agency which had been paying the benefit the amount of any benefits received. The law further stipulates how this money will be recovered when the employee fails to repay the required amount and how agencies will credit the money to their appropriation accounts. Repayment by the employee may not be required if the employee leaves voluntarily to enter into the service of another agency, unless the losing agency informs the employee that payments must be returned. The agency may also waive its right of recovery in the interest of equity.

Selection Procedures

Agencies must select employees to receive benefits in accordance with merit principles.

E.O. 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.

Office of Personnel Management.

Janice R. Lachance,
Director.

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

PART 537—REPAYMENT OF STUDENT LOANS

Sec.
537.101 Purpose.
537.102 Definitions.

537.103 Agency loan repayment plans; higher level review and approval.
537.104 Employee eligibility.
537.105 Criteria for payment.
537.106 Procedures for making loan payments.
537.107 Service agreements.
537.108 Loss of eligibility for loan payment benefits.
537.109 Employee reimbursements to the Government.
537.110 Records.

Authority: 5 U.S.C. 5379

§ 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, which authorizes agencies to establish a program under which they may agree to repay 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 professional, technical, or administrative personnel.

§ 537.102 Definitions.

In this part:

Agency has the meaning given that term in 5 U.S.C. 4101(l) 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—

(a) Is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character; or

(b) Is not subject to the General Schedule established under 5 U.S.C. chapter 53, subchapter III.

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 for the position to which the employee will be newly appointed, or is currently holding (or in the case of an employee 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 law enforcement geographic adjustments under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

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 and E of title IV of the Higher Education Act of 1965; or

(b) A health education assistance loan made or insured under part C of title VII of the Public Health Service Act, or under part B of title VIII of that Act.

§ 537.103 Agency loan repayment plans; higher level review and approval.

(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 student loan repayments;

(2) The situations in which 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 of a payment;

(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 waiving such amount; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action taken in each case.

(b) *Higher level review and approval.*

(1) Except as provided in paragraph (b)(2) of this section, each determination to repay all or part of a student loan, including the amount to be paid, must be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria in advance based on identification of qualifications typically possessed by high quality candidates for a specific position or other similar positions, and authorize the recommending official to offer loan repayment benefits (in an amount within a pre-established range) to any high quality candidate without further review or approval.

§ 537.104 Employee eligibility.

In accordance with the other provisions of this part and 5 U.S.C. 5379, an agency may authorize loan repayments 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.

§ 537.105 Criteria for payment.

(a) *Written determination.* Loan payments made under this part must be based on a written determination that, in the absence of such payments, the agency would encounter difficulty either in filling the position with a highly qualified candidate, or retaining a highly qualified employee in that position. All determinations must be made on a case-by-case basis.

(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 such payments, 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) *Factors to be considered.* In determining whether student loan repayments should be authorized, and in determining the amount of such payments, an agency must consider the following factors, as applicable in the case at hand:

(1) The success of recent efforts to recruit high quality candidates for similar positions (or those with qualifications similar to the ones possessed by the employee), including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(2) Labor market factors that may affect the ability of the agency to recruit high quality candidates for similar positions now or in the future;

(3) Special qualifications or education needed for the position;

(4) The cost of training already given the employee and of training that would be needed by a new employee; and

(5) The practicality of using other recruitment and retention incentives such as the superior qualifications appointment authority provided by § 531.203(b) of this chapter, the authority to pay a recruitment bonus under part 575, subpart A of this chapter, or retention allowances under part 575, subpart C of this chapter.

(e) *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 payments.

(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 by the agency and employee concerned. 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. Repayment benefits must be in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(b) *Loans to be repaid.* Before authorizing loan payments, 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. An agency may repay more than one loan as long as the loan payments 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 value the employee has to the agency, and how far in advance the agency can commit funds. If budgetary considerations are an issue, agencies may pay a specified amount for the first year, with the option of renewing this commitment in subsequent years, funds permitting. This type of arrangement should be part of the initial 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 lifetime aggregate of \$40,000 per employee.

(d) *Employee responsibility.* The employee will be responsible for making loan payments on the portion of the loan(s) that continues to be the responsibility of the employee. The employee will also be responsible for any income tax obligations resulting from the loan payments.

§ 537.107 Service agreements.

(a) Before any loan payments may be made, an agency must require that the employee sign a written agreement to complete a specified period of employment with the agency and to repay loan benefits as required by § 537.109. This agreement may also specify any other conditions of employment the agency feels is appropriate, such as, but not limited to, the employee's position and the duties they are expected to perform, work schedule, or level of performance.

(b) The minimum period of employment to be established under a service agreement must be 3 years, regardless of the amount of loan repayment authorized.

§ 537.108 Loss of eligibility for loan payment benefits.

(a) An employee receiving loan payment benefits from an agency will be ineligible for continued benefits from that agency if the employee:

- (1) Separates from the agency; or
- (2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the head of the agency; or
- (3) Violates any of the conditions of the service agreement.

(b) For the purpose of applying paragraph (a) of this section in the case of an employee covered by an appraisal system established under part 430, subpart B, of this chapter, the employee's most recent rating of record must be at least level 3 ("Fully Successful").

§ 537.109 Employee reimbursements to the Government.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement will be indebted to the Federal Government and must repay the amount of any student loan repayment benefits the employee received from the agency.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the agency terminates before the employee completes the

period of employment specified in the service agreement because:

(1) The employee is separated involuntarily on account of misconduct; or

(2) The employee leaves the agency voluntarily.

(c) If an employee fails to reimburse the agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and Subpart K of part 550 of this chapter, or through the appropriate provisions governing debt collection if the individual is no longer a Federal employee.

(d) Paragraph (a) of this section does not apply when the employee fails to complete a period of employment established under a service agreement because:

(1) The employee is involuntarily separated for reasons other than misconduct; or

(2) The employee leaves the agency voluntarily to enter into the service of any other agency, unless repayment is otherwise specified in the service agreement.

(e) The head of an agency may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest.

(f) Any amount repaid, or recovered from, an employee under this section will be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited will be merged with other sums in such account and will be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

§ 537.110 Records.

Each agency must keep a record of each determination made under this part and make such records available for review upon request from OPM. These records may be destroyed after 3 years or after the program has been formally evaluated by OPM (whichever comes first).

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BILLING CODE 6325-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AG34

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®-24 and NUHOMS®-52B Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear West (TN West), Inc., Standardized NUHOMS®-24P and -52B cask system (NUHOMS® storage system) listing within the "List of approved spent fuel storage casks" to include Amendment No. 2 to Certificate of Compliance (CoC), No. 1004. Amendment No. 2 will make two main changes: it will update the Technical Specifications' fuel qualification tables to reflect additional fuel parameters; and it will allow storage of burnable poison rod assemblies (BPRAs) in model 24P of the NUHOMS® storage system, along with the spent fuel. Amendment No. 2 will also revise and renumber several of the conditions in the CoC to reflect the NRC's new standard format for CoCs. However, no technical changes to the CoC's conditions will be made by this amendment. This amendment will allow holders of power reactor operating licenses to store spent fuel in the TN West NUHOMS® storage system, as amended, under a general license.

DATES: Comments on the proposed rule must be received on or before July 24, 2000.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415-5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level),

Washington, DC. These same documents may also be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after April 1, 2000 are also available electronically at the NRC Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC's Public Document Room reference Staff at (202) 634-3273 or toll free at 1-800-397-4209, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie P. Bush-Goddard, Ph.D., telephone (301) 415-6257, e-mail, SPB@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because the NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on September 5, 2000. However, if the NRC receives significant adverse comments on the direct final rule by July 24, 2000, then the NRC will publish a withdrawal of the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.