UNDER SECRETARY OF DEFENSE
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PERSONNEL AND READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

Subject: Implementation of Enhanced Retention Incentives Authorities

References: (a) Public Law 108-411, "Federal Workforce Flexibility Act of 2004," October 30, 2004
(b) Title 5, United States Code
(c) Title 5, Code of Federal Regulations
(d) DoD Policy and Plan, "Recruitment, Relocation, and Retention Incentives," September 21, 2006
(e) DoD 1400.25-M, "DoD Civilian Personnel Manual," December 1996
(f) DoD 7000.14-R, "Department of Defense Financial Management Regulation," December 2007

This memorandum transmits the Addendum (Attachment 1) to the DoD Policy and Plan authorizing the use of recruitment, relocation, and retention incentives, which was disseminated by Under Secretary of Defense memorandum, "Implementation of Recruitment, Relocation and Retention Incentives" dated September 21, 2006. The Addendum implements the recent changes made to the government-wide retention incentive regulations and issued by the Office of Personnel Management on November 16, 2007, with an effective date of December 17, 2007.

The new provisions authorize the payment of retention incentives when an employee's organization is subject to closure or relocation and the employee is likely to leave his or her current position for a different position in the Federal service, provide

options for method of payment, and establish the conditions under which the payments must be terminated.

This memorandum is approved for public release. Copies may be obtained through the Internet from the DoD Directives Program Web site at http://www.dtic.mil/whs/directives.

This memorandum is effective immediately; it shall be converted to a DoD Instruction within 180 days.

David S. C. Chu

David S. C. Chu

Attachments:
As stated

ADDENDUM TO DoD POLICY AND PLAN
RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES

A. General Information

1. Section 101 of Public Law 108-411(Reference (a)) amended section 5754 of title 5, United States Code (Reference(b)), by providing new authorities to make retention payments. On May 13, 2005, the Office of Personnel Management (OPM) published interim regulations at part 575, subpart C, of title 5, Code of Federal Regulations (Reference(c)) implementing the changes to section 5754 of Reference (b). Part D of the DoD Policy and Plan, "Recruitment, Relocation and Retention Incentives," issued September 21, 2006 (Reference (d), implemented the provisions of section 5754 of Reference (b) as regulated by OPM.

2. When issuing the interim regulations of May 13, 2005, OPM did not issue regulations covering payment of retention incentives for employees likely to leave for a different position in the Federal service. However, OPM did ask for comments on the possibility of issuing regulations on that subject, including situations where an employee is likely to leave for a position in another Federal agency before the closure or relocation of the employee's office or facility. Subsequently, on November 16, 2007, OPM published final regulations amending the retention incentive regulations in part 575(C) of Reference (c), to establish the authority to pay a retention incentive to employees likely to leave for a different position in the Federal service before the closure or relocation of the employee's office, facility, activity, or organization. The regulations, which became effective as of December 23, 2007, add section 315 to part 575(C) of Reference (c), and authorize the enhanced retention incentive flexibility. Although the regulations regarding this new flexibility are contained in section 575.315 of Reference (c), the section also includes numerous cross-references to provisions in other sections of part 575(C) of Reference (c). These provisions, as implemented by part D of Reference (d) and the Addendum, must be followed when using the new authority within the Department.

3. Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent appointing authority for themselves and their serviced organizations may approve retention incentives when eligible employees are likely to leave their current position for another position in the Federal service. This authority may be further delegated, in writing, for use in accordance with this guidance. Management officials delegated the authority for approving the incentives are hereafter referred to as "authorized management officials."

4. Employees eligible for the retention incentive include employees in organizations subject to closure or relocation who are assigned to General Schedule positions, senior-level (SL) and scientific or professional (ST) positions (paid under section 5376 of Reference (b)), Senior Executive Service (SES) positions (paid under sections 5311-5317 of Reference (b)), Executive Schedule positions, law enforcement officer and prevailing rate positions, and positions to which OPM has extended eligibility. For the purposes of this regulation, National Security Personnel System (NSPS) employees with comparable positions are eligible for the retention incentive. (See section 9901.107 of Reference (c).)

5. Employees who are ineligible for incentives include:

    a. Employees in positions to which an individual is appointed by the President, either by and with the advice and consent of the Senate, or without the advice and consent of the Senate;

    b. Employees in positions in the SES as noncareer appointees (as defined in section 3132(a) of Reference (b)); or

    c. Employees in positions excepted from the competitive service by reason of their confidential, policy-determining, policy-making, or policy-advocating nature.

6. This policy applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter collectively referred to as the "DoD Components").

B. Authorization of Retention Incentives

1. An authorized management official may approve a retention incentive for an employee in a closure or relocation situation when the authorized management official determines that:

    a. Given the organization's mission requirements and the employee's competencies, the organization has a special need for the employee's services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization; and

b. In the absence of a retention incentive, the employee would be likely to leave for a different position in the Federal service (including a position in another Federal agency, a position in another DoD Component or a different position in the same DoD Component) as evidenced by the employee's affirmation or any additional supporting documentation the authorized management official determines is appropriate.

2. Incentives may be authorized only when the employee has received a general or specific written notice from the organization that his or her position may or would be affected by the closure or relocation of the office, facility, activity, or organization (e.g., the employee's position may or would move to a new geographic location or the employee's position may or would be eliminated). Inclusion of an office, facility, activity, or organization on the Base Realignment and Closure list can be considered a general notice for the purposes of authorizing retention incentives under this Addendum.

3. Individual retention incentives may be up to 25 percent of an employee's rate of basic pay, as defined in section 530.202 of Reference (c) (including locality pay, certain special salary supplements, or local market supplements, as applicable). OPM may waive the limitation that incentives may not exceed 25 percent of an employee's annual rate of basic pay, and set the limitation at up to 50 percent, under certain circumstances. The procedures for requesting a waiver of the limitation for retention incentives are in section 575.309(e) of Reference (c), and in paragraph D.1.c. of Reference (d). Requests must be routed through the DoD Civilian Personnel Management Service.

4. An authorized management official also may approve retention incentives for a group or category of employees in a closure or relocation situation when the group or category of employees has been narrowly defined and covers no more than one occupational series, and when the authorized management official determines that:

   a. Given the organization's mission requirements, the organization has a special need for the services of employees in the defined group or category that makes it essential to retain the employees in their current positions during a period of time before the closure or relocation; and

b. In the absence of retention incentives, there is a high risk that a significant number of the employees in the group would be likely to leave for different positions in the Federal service.

5. Group retention incentives may be up to 10 percent of an employee's rate of basic pay unless the DoD Component seeks a waiver from OPM. The procedures for requesting a waiver of the limitation for retention incentives are in section 575.309(e) of Reference (c), and in paragraph D.1.c. of Reference (d). Requests must be routed through the DoD Civilian Personnel Management Service.

6. Group retention incentives may not be authorized for employees in SL or ST positions, SES positions, positions in the Executive Schedule, or employees in similar categories for which payment of retention incentives has been approved by OPM (See sections 575.305(c) and 575.315(a)(2) of Reference (c).)

7. Retention incentives must be approved by an official who is at least one level higher than the employee's supervisor unless there is no higher level in the DoD Component Command. The requirement to obtain higher-level approval does not apply when group retention incentives have been previously authorized for the applicable category of employees.

8. Retention incentives may be approved provided the authorized management official prepares a written determination that, given the organization's mission requirements and the employee's competencies, it is essential to retain the employee (or group of employees) in his or her current position during a period of time before closure or relocation, and, absent a retention incentive, the employee(s) would be likely to leave for another position in the Federal service.

9. The written determination authorizing the incentive must also specifically address the reasons for determining the amount and timing of the incentive, the reasons for determining the length of the service period, application of the factors in section 575.306(b) of Reference (c) and paragraph D.1.h.(i) or (ii) of Reference (d), as applicable, and:

   a. The extent to which the employee's departure to a different position in the Federal service would affect the organization's ability to carry out an activity, perform a function, or complete a project the organization deems essential to its mission before and during the closure or relocation period (e.g., the need to ensure minimal disruption in the performance of mission-critical functions or

provide an essential service to the public, the need for continuity in key operations, the need to train employees who will move with the organization, or the need to assist with the actual closure or relocation);

b. The competencies possessed by the employee that are essential to retain; and

c. The agency (which may be in the judicial branch or the executive or legislative branch as defined in section 5102(a)(1) of Reference (b)) for which the employee would be likely to leave in the absence of the retention incentive. Documentation of the agency for which the employee would be likely to leave also must address the gaining agency's geographic location. If employees are likely to leave for a different position in a DoD Component, the documentation should identify the gaining DoD Component.

10. DoD Components must address similar factors in documenting each determination to pay a retention incentive to a group or category of employees.

11. Retention incentives may be approved only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by chapter 43 of Reference (b) or part 430 of Reference (c)) for the position held immediately before the move is at least "Fully Successful" or equivalent. (See sections 575.305(d), 575.311(b), and 575.311(g)(4) of Reference (c).)

C. Payment of Retention Incentives

1. Employees must sign a service agreement prior to receiving any retention incentive payments authorized under the provisions of section B of this Addendum.

2. In no event may the service period established in the service agreement extend past the date on which the employee's position is actually affected by the closure or relocation of the employee's office, facility, activity, or organization (e.g., the date the employee's position moves to a new geographic location or the date the employee's position is eliminated).

3. Retention incentives paid to employee(s) likely to leave for another position in the Federal service may not be paid before the employee completes the period of service covered by the payment. Retention

incentives may be paid in a single lump-sum payment after the completion of the full service period or in installments after the completion of specified periods of service in accordance with the provisions of section D.2.b.(i-iv) of Reference (d).

4. If the DoD Component pays biweekly installments, the installment cannot be paid at the full retention incentive percentage rate established by the service agreement (section 575.315(e)(2) of Reference (c)). As an example, the employee accepts a 10 percent retention incentive and signs an agreement for 1 year of service. If the DoD Component chooses to pay in biweekly installments, the payments must be at less than 10 percent of the employee's biweekly rate of basic pay. The remaining balance will be paid in full upon completion of the service period.

5. An authorized management official must certify in writing, at least annually, the continuing need for retention incentive payments made to employees likely to leave for another position in the Federal service.

6. Notwithstanding section 575.309(g) of Reference (c), acceptance of an offer to relocate negates the employee's eligibility for continued retention incentives under the provisions of section 575.315 of Reference (c) and this Addendum, as the employee is no longer considered likely to leave for a different position in the Federal service.

7. Retention incentives are not part of an employee's rate of basic pay for any purpose.

8. Payment of the retention incentive to DoD employees not covered by NSPS is subject to the aggregate limitation on pay under part 530(B) of Reference (c) unless the employee meets the criteria of section 9902(e)(2) of Reference (b). Payment of the retention incentive to employees meeting the criteria of section 9902(e)(2) of Reference (b) is subject to the limitations set forth in that section while payment of the retention incentive to NSPS employees is subject to the aggregate limitation on pay under SC1930.8.2 of Subchapter 1930 of DoD 1400.25-M (Reference (e)).

D. Service Agreement Requirements

1. Employee service agreements must contain:

    a. The employee's name, the title, series (or occupational code), and grade (or pay level) of his or her position, and the period of service (in months and years) agreed to by the employee(s).

b. The actual beginning and ending dates of the service period.

c. The retention incentive percentage rate, the method of payment and, if paid in installments, the method of installment payments (e.g., equal percentage rates or reduced percentage rates per installment with a final lump-sum payment of the accrued but unpaid amount of the incentive).

d. The conditions under which the authorized management official must terminate the service agreement (e.g., if an employee is demoted or separated for cause or receives a rating of record of less than "Fully Successful" or equivalent, if the closure or relocation is cancelled, if the employee moves to a position not affected by the closure or relocation, if the employee accepts an offer to relocate with the organization, or if the employee moves to a position within the organization that is not covered by his or her service agreement).

e. The terms or conditions that may result in management termination of the service agreement (e.g., insufficient funds).

f. The extent to which periods of time on detail, in a nonpay status, or in a paid leave status (other than such periods of time due to military service, which are considered creditable under section 353.107 of Reference (c)) count towards completion of the service period.

g. The consequence of both voluntary and management decisions to terminate service agreements as required by section 575.310(d) of Reference (c), including the conditions under which the employee will or will not be required to repay any unearned portion of the incentive he or she may already have received and the conditions under which management must pay any earned portion of the incentive not yet disbursed.

h. A statement that the determination to pay a retention incentive must be reviewed at least annually to determine if payment is still warranted.

i. A statement that the decision to terminate a service agreement may not be grieved or appealed.

2. Service agreements must terminate if:

a. An employee is demoted, is separated for cause, or receives a less than "Fully Successful" or equivalent rating of record. An employee who fails to complete the period of service specified in the service agreement for these reasons may retain any retention incentive payments that are attributable to completed service, but the organization is not obligated to pay any amount attributable to completed service that had not yet been paid at the time of the termination of the service agreement.

b. The closure or relocation is cancelled or no longer affects the employee's position. The employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any part of a retention incentive payment still owed by the organization that is attributable to the completed service.

c. The employee moves to another position not affected by the closure or relocation (including another position within the same agency). An employee whose movement is the result of management action is entitled to any retention incentive payments that are attributable to completed service and to receive any part of a retention incentive payment still owed by the organization that is attributable to the completed service. An employee whose movement is voluntary only is entitled to retain any retention incentive payments attributable to completed service already received. No further payment is due unless the organization agreed to such payment under the terms of the service agreement.

d. The employee accepts the organization's offer to relocate with his or her office, facility, activity, or organization. An employee who accepts relocation only is entitled to retain any retention incentive payments attributable to completed service already received. No further payment is due unless the organization agreed to such payment under the terms of the service agreement.

e. The employee moves to another position within the same office, facility, activity, or organization subject to closure or relocation that is not covered by the employee's service agreement. An employee whose movement is the result of management action is entitled to any retention incentive payments that are attributable to completed service and to receive any part of a retention incentive payment still owed by the organization that is attributable to the completed service. An employee whose movement is voluntary only is entitled

to retain any retention incentive payments attributable to completed service already received. No further payment is due unless the organization agreed to such payment under the terms of the service agreement. The organization may authorize a new retention incentive for the employee, as appropriate.

3. An authorizing official may unilaterally terminate service agreements based solely on management needs unrelated to closure or relocation. (See section 575.311(a) of Reference (c)). The employee is entitled to retain any retention payments that are attributable to completed service and to receive any part of a retention incentive payment still owed by the organization that is attributable to the completed service.

4. The authorizing official must notify an employee in writing when an employee's service agreement is terminated. Decisions to terminate agreements may not be grieved or appealed.

5. The debt collection process for continuing employees is outlined in volume 8 of DoD 7000.14-R (Reference (f)), while that for debtors no longer in Government service is found in volume 5 of Reference (f).

E. Documentation

1. Authorized management officials are responsible for ensuring that each incentive is documented and records are maintained in accordance with part 575 of Reference (c), and this Addendum.

2. Incentives will be processed in the Defense Civilian Personnel Data System (DCPDS) in accordance with OPM processing instructions.

F. Reporting Requirements

1. Data from DCPDS will be the primary source of numerical information on the use of incentive authorities.

2. DoD Components will provide data not available from DCPDS on the use of incentive authorities as required to meet OPM reporting requirements (See sections 575.313(b) and 575.315(i) of Reference (c)).

G. Accountability

1. The Heads of the DoD Components shall ensure appropriate and effective use of this authority to support mission requirements and to conform to merit system principles.

2. The authorized management officials shall:

    a. Determine which positions require the payment of an incentive and establish the terms of the service agreements.

    b. Annually review retention incentives, adjust payment amounts as warranted by conditions that have changed since the incentive was authorized, and record the results of this review in writing.

    c. Terminate service agreements and retention incentive payments consistent with this policy.

    d. Keep accurate records of written determinations.

Recruitment, Relocation, and Retention Incentives

Summary of General Provisions

	Recruitment	Relocation	Retention
Eligibility	*Employee newly appointed* to a position likely to be difficult to fill in the absence of an incentive First appointment or following break in service of at least 90 days After the service agreement is signed, a payment may be made to an employee prior to entering on duty	*Current employee* who relocates to accept a position in a new geographic area (50 mile rule) likely to be difficult to fill in the absence of an incentive Relocation may be temporary Employee must establish residence in the new geographic area before any payment	*Current employee* with unusually high or unique qualifications or when there is a special need for the employee's continued service and he or she is likely to leave Federal service in the absence of an incentive Or, if the employee's organization is subject to closure or relocation, when the employee is likely to leave his or her current position for a different position in the Federal service
	Determination to pay the incentive must be made before the employee enters on duty		
	Employee must have and/or maintain Fully Successful or equivalent performance		
Categories of positions positions covered	General Schedule (GS), senior-level (SL) and scientific/professional (ST), Senior Executive Service (SES)(career appointments), Executive Schedule (EX), law enforcement officer, prevailing rate, positions OPM has extended eligibility, and National Security Personnel System (NSPS) employees with comparable positions Groups of positions may be targeted – Excludes levels above GS-15 and comparable		
Service agreements	At least 6 months but not more than 4 years with Defense Component		Required if used with OPM waiver or in connection with closure or relocation Except as above, not required if paid in biweekly installments Review at least annually
Payments	Up to 25% of the annual rate of basic pay as of the beginning of the service period (includes locality pay/special rate supplement) multiplied by number of years (and fractions) covered by the service agreement Based upon critical need, OPM may waive the limitation (up to 50% of salary) Total incentive can not exceed 100% of basic pay as of beginning of service period		Up to 25% of basic pay earned in the service period preceding payment (up to 10% for group incentives) Based upon a critical need, OPM may waive the limitation (up to 50% of salary)
Payment methods	At the beginning or end of the service period or in installments		At the end of a full service period or after completion of specified periods of service