

DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

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DPM LETTER: 572 - 1

SUBJECT: Payment of Travel and Transportation  
Expenses of New Appointees

DATE: August 13, 1987

The Office of Personnel Management (OPM) has issued new regulations (5 CFR 572) concerning agencies' authority to pay travel and transportation expenses of new appointees. Effective September 3, 1987, these new regulations supersede the shortage category determinations currently published in Chapter 571 of the Federal Personnel Manual. OPM is allowing a 120-day transition period after September 3 so that agencies experiencing shortages of candidates for positions covered by Chapter 571 can continue to pay appointees' travel expenses while processing new determinations under the procedures of the new regulations.

These regulations also supersede the Department's authority to make payments for travel and transportation to first post of duty contained in our Master Delegation Agreement with OPM (DPM Chapter 981, Appendix A).

At this time, the Departmental Office of Personnel is not placing any restrictions on Operating Administrations' use of this new authority. We will, however, review each Administration's use of the authority at 6-month intervals. Reporting requirements will consist of providing to us a copy of the Administration's written record for each of its shortage determinations. That written record must document the reason(s) for the determination and recruiting efforts undertaken to fill the position. Such written record is required by 5 CFR 572.301(b). The report should also contain copies of any internal Administration policies and procedures issued to implement this authority. Administrations will be notified by DPM Bulletin when reports are due.

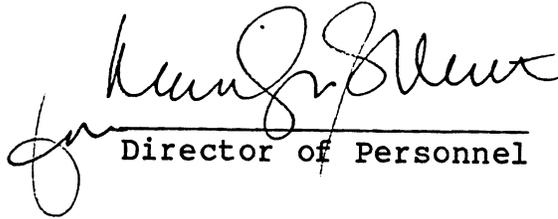
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Questions concerning the authorization of travel and transportation for new appointees should be directed to Denise Schossler, M-16, on 366-9447.

  
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Director of Personnel

Attachment

# Rules and Regulations

Federal Register

Vol. 52, No. 149

Tuesday, August 4, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 572

#### Travel and Transportation Expenses; New Appointees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing regulations setting forth the basic criteria and procedures used to determine whether a shortage of qualified candidates exists for particular positions. The shortage determination is required before Federal agencies may pay the travel and moving costs which new appointees incur when reporting to their first official duty stations. These regulations delegate to agencies the authority to make new shortage determinations in accordance with these criteria, and terminate existing shortage determinations that do not meet the criteria.

**EFFECTIVE DATE:** September 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Tracy Spencer, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** Section 5723 of title 5, United States Code, provides that OPM may find that a shortage of eligibles exists for particular positions and, based on that finding, may authorize agencies to pay travel and transportation expenses to the first post of duty for appointees to those positions. OPM has used its authority under 5 U.S.C. 5723 both to authorize payment of travel and transportation expenses for appointees to individual vacancies, and to authorize agencies to pay such expenses without obtaining approval in individual cases when the agencies had experienced difficulty in recruiting qualified candidates for many vacancies in a particular occupation(s),

grade(s), and location(s) and those conditions were likely to continue for the foreseeable future. OPM also entered into delegation agreements with various agencies authorizing those agencies to make shortage determinations for high grade positions and positions in occupations where the agencies were the sole or predominant employers.

Proposed regulations delegating to agencies authority to make shortage determinations for any vacancies were published for comment on March 11, 1987 (52 FR 7427). Under those regulations, agencies were permitted to pay travel and transportation expenses for all new appointees to (1) positions for which special salary rates were established pursuant to 5 U.S.C. 5303; (2) positions filled by members of the National Defense Executive Reserve Program called to active duty in the event of a national emergency; and (3) positions for which direct-hire authorities were in effect. Individual shortage determinations were not to be required for those positions because the criteria used in approving special pay rates and direct-hire authorities were as strict or stricter than those prescribed for approving payment of travel and transportation expenses. For positions not covered by the three general authorizations, agencies were to determine whether a shortage of qualified candidates existed using the criteria set out in the regulations. Both the authority to determine whether a shortage exists for particular positions and the authority to pay travel and transportation expenses for particular appointees were discretionary.

#### Analysis of Comments

Written comments on the proposed regulations were received from 10 Federal agencies, which generally supported the proposal, from one individual employee, and from two employee organizations. Several agencies suggested editorial changes, which have been incorporated in the final regulations.

Two agencies suggested expanding the list of general authorizations to include all scientific and engineering positions and positions filled by outstanding scholars. Adoption of either proposal would exceed OPM's authority under 5 U.S.C. 5723. The law permits payment of new appointees' travel and

transportation expenses only when there is a shortage of well qualified candidates for the positions being filled. Such a shortage may not exist for all positions in the two suggested categories.

Many scientific and engineering occupations are characterized by severe and chronic shortages and are covered by special pay rates and/or direct-hire authorities. We expect that condition to continue. The regulations permit payment of moving expenses for appointees in those occupations. Availability of candidates in the remaining scientific occupations varies considerably among agencies and positions. For example, the biological sciences—which would be covered by any definition of scientific positions—include occupational series in which shortages have been found only for specific job titles and agencies.

The law requires that payment of moving expenses for new appointees be justified by a shortage of candidates for particular positions. The law does not authorize OPM to provide such payment for certain candidates. While the availability of marginally qualified candidates need not preclude a finding that a shortage exists, the law would not permit payment based on a shortage of outstanding scholars when other well qualified candidates were available.

Two agencies suggested that the shortage determinations currently published in the Federal Personnel Manual remain in effect for a specified period after the new regulations become effective. This would allow agencies that are still experiencing shortages of candidates for any of those positions to continue paying appointees' travel expenses while processing new determinations under their delegated authority. One of the agencies suggested 120 days as an appropriate transition period; the other suggested 18 months. We have adopted the proposed 120-day transition period. Agencies may, at their discretion, continue to use the shortage listings in the Federal Personnel Manual for 120 days following the effective date of these regulations. All written commitments to pay travel and transportation expenses for appointees to such positions may be honored as long as the commitments are dated before the expiration of this 120-day grace period, even though the

appointees do not report for duty until a later date.

One agency suggested that shortage determinations made by agencies should remain in effect indefinitely. We did not adopt this suggestion because the requirement for review and redetermination is necessary to ensure that payments continue to be limited to shortage occupations, as required by law. We did, however, increase the maximum duration of agencies' shortage determinations to 3 years. Labor market conditions for any positions are not likely to change substantially in a 3-year period.

Two agencies and one employee suggested that agencies need authority to pay additional expenses associated with relocation, particularly those associated with real estate costs, house hunting trips, and temporary housing. They note that such expenses are often paid by private employers. This suggestion is outside OPM's jurisdiction. Under the law, OPM is responsible only for determining whether a shortage of candidates exists for particular positions. The General Services Administration (GSA) has legal responsibility for determining what expenses agencies may pay. Copies of these comments were forwarded to GSA for information and appropriate consideration.

The employee organizations expressed concerns about potential misuse of management discretion. One organization, concerned about possible disparate or discriminatory treatment of individual appointees, recommended that payment of travel and transportation expenses be mandatory whenever an agency determines that a shortage of qualified candidates exists for a particular type of position. The other organization, concerned that agencies would waste money paying expenses to bring new appointees into an organization which already had employees who could do the work, recommended that payment be prohibited when an agency has three or more internal employees or applicants on a best qualified list for a particular position.

The disparity between these comments suggests the difficulty of establishing mandatory criteria that would be equally appropriate in all situations. Even in occupations where shortages are widespread (e.g., those for which special pay rates or direct-hire authorities have been approved on a nationwide basis), some agencies experience greater recruiting difficulty than others. The differences may reflect many factors: Public awareness of the agency's programs; established

relationships between the agency and academic and professional organizations; and, as one commenter suggested, availability of qualified candidates within the agency's workforce. Positions that require frequent travel or unusual working hours or that are in remote locations may be more difficult to fill than are positions with comparable duties and responsibilities that offer more attractive working conditions. For this reason, we are not adopting the suggestion that payment of travel and transportation expenses be mandatory for positions for which current shortage determinations exist. We believe, however, that sufficient protections already exist against application of this authority in an arbitrary or discriminatory manner.

Payment of travel and transportation expenses for new appointees is subject to 5 U.S.C. 2301 and 2302, which require that all employees and applicants receive fair and equitable treatment, and forbid discrimination for or against any employee or applicant on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation. These principles are restated in the civil service rules (5 CFR 4.2). Because the merit principles and prohibited practices provisions apply to all actions regarding employment, pay, and benefits taken under OPM's regulations, it is unnecessary to restate them in individual regulations.

Agencies may establish whatever internal policies and guidance they find necessary to ensure compliance with merit principles and with the criteria set forth in these regulations. In addition, we have added to the final regulations a provision that each agency will make the reasons for its shortage determination(s) regarding particular positions a matter of record and will furnish information about those reasons to an employee or applicant on request. The record may be in any form (e.g., internal policy manual, memos to agency offices, approved staff recommendations for specific determinations) so this requirement should not create additional paperwork for agencies. We believe that this provision, along with the basic statutory protections, will satisfy the fair treatment concerns expressed by employee organization commenters.

In response to an employee organization's concern that money might be wasted recruiting new appointees who are not better qualified to perform particular jobs than employees already at the agency, we have strengthened the language requiring agencies to consider

internal staffing efforts when deciding whether a shortage exists. We have also added availability of well-qualified internal candidates as an example of a situation that may justify an agency's decision not to pay moving costs for a particular position. We are not, however, adopting the suggestion that payments for new appointees be prohibited when at least three candidates are available internally. Quality as well as quantity of candidates may be a factor in determining whether a shortage exists. Many agencies' merit promotion plans provide for referral of the best qualified employees available for a particular position, even when all of the available employees are rated minimally or marginally qualified. Restricting agencies' ability to recruit outside candidates in that situation would not ensure the best return for salary expenses.

We believe that budget and cost controls offer the most effective deterrent to excessive travel payments. No funds are appropriated specifically for the purpose of paying new appointees' travel and transportation expenses; money used for that purpose reduces the funds available to meet other travel or salary needs. Although OPM has authorized payment of moving expenses for appointees to many positions (listed in chapter 571 of the Federal Personnel Manual), agencies have made prudent use of those authorizations. We expect that condition to continue.

Except for the changes discussed above, the final regulations are the same as the proposed regulations published on March 11, 1987. When these regulations become effective, the general delegation of authority to agencies will supersede all delegation agreements covering shortage determinations under 5 U.S.C. 5723.

#### **E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies and employees.

#### **List of Subjects in 5 CFR Part 572**

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.  
 Constance Horner,  
 Director.

Accordingly, OPM is amending 5 CFR Part 572 as follows:

**PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES**

1. The authority citation for Part 572 is added as set forth below, and the authority citation following any sections in Part 572 is removed:

Authority: 5 U.S.C. 5723.

2. Subpart A is redesignated as Subpart B with the heading revised to read as follows:

**Subpart B—Shortage Determinations for Positions Above Grade GS-15 (or Equivalent)**

§§ 572.101 and 572.201 [Redesignated as §§ 572.201 and 572.202]

3. Sections 572.101 and 572.201 are redesignated as §§ 572.201 and 572.202, respectively.

4. A new Subpart A is added to Part 572 to read as follows:

**Subpart A—General Provisions**

Sec.

572.101 Agency authority.  
 572.102 Agencies' discretion in paying travel and transportation expenses.

**Subpart A—General Provisions**

**§ 572.101 Agency authority.**

Subject to the provisions of Subparts B and C of this part, an agency may determine that a shortage of qualified candidates exists for particular positions and that payment of appointees' travel and transportation expenses to the first post of duty is appropriate as a recruiting incentive. An agency may exercise this authority only in accordance with the requirements set out in this part and with standards of performance established by the Office of Personnel Management.

**§ 572.102 Agencies' discretion in paying travel and transportation expenses.**

Payment of travel and transportation expenses for any individual appointee will be at the discretion of the employing agency. A determination by one agency that a shortage of eligibles exists for a particular title, series, grade and geographical location does not require a like determination by any other agency. A determination made in connection with one specific vacancy does not require a like determination in connection with future vacancies. In deciding whether to pay travel and transportation expenses for an

individual appointee, an agency may consider such factors as availability of funds and availability of well-qualified internal candidates, as well as the shortage criteria set out in this part.

5. A new Subpart C is added to Part 572 to read as follows:

**Subpart C—Shortage Determinations for Positions at Grades GS-15 and Below (or Equivalents)**

**§ 572.301 Determination of shortage for positions at grades GS-15 and below (or equivalents).**

(a) *Continuing determinations.* The Office of Personnel Management has determined that a shortage of qualified candidates exists for the positions listed below. Agencies may pay travel and transportation expenses to first post of duty for appointees to these positions without making a specific shortage determination, assuming other legal requirements are met.

(1) Positions for which special pay rates established pursuant to 5 U.S.C. 5303 are in effect;

(2) Positions filled by members of the National Defense Executive Reserve program who are called to duty in the event of a national emergency; and

(3) Positions filled under direct-hire authority, when that authority covers all positions in a specific series, grade, and geographic location. Payment of travel and transportation expenses is not authorized under this paragraph when direct-hire authority is granted only for certain candidates for the positions (e.g., candidates attaining a predetermined cutoff score; outstanding scholars).

(b) *Other determinations.* An agency may pay appointees' travel and transportation expenses for positions other than those listed above only when the agency determines that there is a shortage of well qualified candidates for the positions. The criteria in paragraphs (b)(1) and (2) of this section will be used in determining whether a shortage exists for a particular position and whether the shortage will also exist for future vacancies in the same series, grade, and location. Each agency will make the reasons for its shortage determination(s) regarding particular positions a matter of record and will furnish information about those reasons to an employee or applicant on request.

(1) *Reasonable recruitment effort.* Appropriate recruiting efforts for positions in the competitive service will include requests for referral of eligibles from the appropriate competitive examination, contact with the State Employment Service office or offices serving the locality concerned, and, where appropriate, contact with

academic institutions, technical and professional organizations, or other organizations likely to produce qualified candidates for the positions. Recruiting for positions in the excepted service will be in accordance with the agency's objectives and staffing procedures, but must include contacts with academic institutions, or State Employment Service offices, or other organizations appropriate for the particular positions. The possibility of relieving a shortage for a certain type of position through broader publicity and recruitment will be considered in determining whether a shortage of qualified candidates exists.

(2) *Internal efforts.* When determining whether a shortage of qualified candidates exists for any position, an agency will consider the number and quality of candidates available within its current workforce. Consideration will also be given to efforts to relieve the shortage situation through such techniques as job engineering, training programs for under utilized employees, or automation.

(3) *Duration of the shortage.* Shortage determinations will be effective for a period not to exceed 3 years and may be renewed by the agency only upon a showing that the criteria of this paragraph are still met. Unless there is evidence that the shortage of qualified candidates for particular positions is continuing, the shortage determination will terminate when the current vacancy or vacancies in the positions are filled. The length of time active recruiting has been conducted for the position(s), the current and projected vacancy rate, and the number of declinations will be considered in determining whether the shortage of qualified candidates for particular positions is continuing.

[FR Doc. 87-17615 Filed 8-3-87; 8:45 am]

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