

may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

§ 5.4. Information and testimony:

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws,

rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

(FR Doc. 80-3338 Filed 1-23-80 2:45 am)

BILLING CODE 5325-07-01

5 CFR Part 771

Agency Administrative Grievance System

Correction

In FR Doc. 79-39829 appearing at page 77127 in the issue of Monday, December 31, 1979; on page 77131; third column, second line of paragraph (b); § 771.206; insert "not" after "does".

BILLING CODE 5305-01-01

5 CFR Part 831

Retirement Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: On January 15, 1980, the Office of Personnel Management published at 45 FR 2837 an amendment to the Retirement regulations (FR Doc. 80-1328). This document corrects the effective date of that amendment.

EFFECTIVE DATE: The correct effective date should read: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones, Issuance System Manager, 202-254-7086.

(5 U.S.C. 3338(d)(2))

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

(FR Doc. 80-3338 Filed 1-23-80 2:45 am)

BILLING CODE 5325-07-01

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Noninflationary Pay and Price Behavior; Amendments to Part 705 and Modifications to Questions and Answers

AGENCY: Council on Wage and Price Stability.

ACTION: Interim final rules, questions, and answers, and a request for comments.

SUMMARY: The Council is modifying the treatment of incremental pay increases under the pay standard so as to exclude both longevity and qualification increases under pre-existing incremental pay plans or practices in making pay standard calculations under the collective-bargaining agreement method or under the fixed-population method. These modifications implement the policies recommended by the Pay Advisory Committee and accepted by the Council.

DATES: The effective date for these changes and Questions and Answers is: January 22, 1980. Written comments may be submitted by February 21, 1980.

ADDRESS: Written comments should be addressed to: Office of the General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT:

Office of Pay Monitoring: Janice Murphey—458-7103; Lucretia Tanner—458-7180; Malcolm Liggett—458-7180; Homer Jack—458-7180.

Office of the General Counsel: Daniel Duff—458-8210; Jane Campana—458-8210.

SUPPLEMENTARY INFORMATION: On September 23, 1979, the President announced the creation of a Pay Advisory Committee to advise the Council on policies that encourage anti-inflationary behavior by employers and labor, that decelerate the rate of inflation, and that provide for a fair and equitable distribution of the burden of restraint. The Committee's charter provides that it will recommend new or revised interpretations of the pay standard. Until the Council acts on any recommendations, the first-year pay standard (in Subpart 705B) remains in effect with the modifications that have been adopted (see the Council's questions and answers published in the Federal Register on October 12, 1979 (44 FR 56900), October 19, 1979 (44 FR 60251), and November 19, 1979 (44 FR 66534); see also the Federal Register of

December 17, 1979 (44 FR 73003) and of December 23, 1979 (44 FR 78748).

On December 18, 1979, the Committee recommended that the Council exclude from pay rate calculations under the fixed-population or collective-bargaining-agreement methods for determining compliance any longevity or qualification increases under a pre-existing incremental pay plan or practice. During the first program year, the Council treated longevity increases as chargeable pay increases, while qualification increases (associated with skill changes) were allowed to be excluded. However, many incremental pay plans include a mix of qualification and longevity increases, and the proper classification depends on the intent of the plan. The Council left the classification to the individual parties. But, as the Council noted in its August 10, 1979, Issue Paper, State and local governments often made determinations during the first program year that resulted in dissimilar treatment of similar compensation plans among neighboring jurisdictions. To resolve this problem, the Council has decided to accept the Pay Advisory Committee's recommendation. Thus, in making pay standard calculations under the collective-bargaining agreement method (Section 705B-3) or under the fixed-population method (Section 705B-4(b)), employers may exclude both longevity and qualification increases under pre-existing incremental pay plans or practices. Such exclusions are, of course, not permissible under the remaining method of pay computation (Section 705B-4(a)).

Explanatory questions and answers on this matter are also being published by the Council.

The Council is publishing these materials on an interim final basis since many companies that are establishing their pay plans have a need to know and must be able to rely on the Council's new treatment of incremental pay increases. The Council has provided a 30-day comment period, since it is important to receive any public comments as soon as possible so that any changes may be made rapidly. However, companies may rely fully on these interim final changes to Part 705, and the questions and answers until these materials are modified.

Issued in Washington, D.C., January 14, 1980.

R. Robert Russell,
Director, Council on Wage and Price Stability.

Accordingly, in the Appendix to Part 705, Sections 705B-3 and 705B-4 are

revised on an interim basis to read as follows:

1. Section 705B-3 is amended by adding paragraph (g) to read as follows:
Section 705B-3 Application of the Pay Standard to Collective Bargaining Agreements.

(g) The effects of legitimate promotions and increases under pre-existing incremental pay plans and practices are excluded from computations for the purpose of measuring compliance with the pay standard.

2. Section 705B-4 is amended by modifying paragraph (b) to read as follows:

Section 705B-4 Application of the Pay Standard to employees not under Collective Bargaining Agreements.

(b) Alternatively, compliance may be determined by computing pay rate changes for the fixed population of continuing employees employed in the beginning and end of the program year. In this case, pay rate increases may exclude the effects of legitimate promotions and increases under pre-existing incremental pay plans and practices.

In addition to amending these sections, the Council is also modifying the Questions and Answers concerning the treatment of incremental pay increases as follows:

1. Questions and Answers II-E-3 and II-E-9 published in the First-Year Compendium and originally published in the Federal Register of December 23, 1973 (43 FR 80777) under the same designations are deleted.

2. Questions and Answers II-D-8 and I-E-12, published in the First-Year Compendium and originally published in the Federal Register of January 25, 1979, (44 FR 5382) under designations II-D-10 and II-E-12, respectively, are also deleted.

3. Question and Answer II-E-7 published in the First-Year Compendium and originally published in the Federal Register of December 28, 1973 (43 FR 80777) under the same designation is amended to read as follows:

Q: 7. Section 705B-4(b) says that compliance may be determined on the basis of the average pay rates for continuing employees. What is the implication of this option?

A. This option allows the company to follow pay rates for the fixed population of continuing employees employed throughout the program year. This approach may be especially useful to small businesses that have changes in

the composition of the work force; but do not typically perform the cost-accounting analyses needed to adjust for these compositional shifts.

When excluding promotion and incremental increases under this method, the company should be prepared to demonstrate that such increases granted during the program year are consistent with historical practices.

4. The following four Questions and Answers are adopted to read as follows:

Q. What is a pre-existing incremental pay plan or practice?

A. Any plan or practice in effect before October 1, 1979.

Q. Are increases paid under pre-existing incremental pay plans and practices chargeable against the pay standard?

A. Qualification increases associated with defined improvements in an employee's job-related credentials such as completion of an educational or vocational training program and other regularly programmed incremental increases including longevity increases in pre-existing pay plans shall be excepted from the pay standard when compliance is measured under Section 705B-3 and 705B-4(b).

Q. What changes in pre-existing incremental pay plans and practices are chargeable against the pay standard under Sections 705B-3 and 705B-4(b)?

A. All structural changes in pre-existing incremental pay plans and practices that increase the cost of such increments are charged against the standard. Such changes include (but are not limited to) adding steps above the top step, reducing the number of steps required to reach the top step, increasing the established differential between steps; and shortening the time periods between steps. Pay increases resulting from implementation of a new incremental pay plan or practice should be charged. Changes in the amount of the difference between increments resulting from the general increase are not considered to be structural changes in a pre-existing incremental pay plan or practice.

Q. Does the treatment of increment increases under Sections 705B-3(g) and 705B-4(b) apply to merit pay plans?

A. Increases that represent movement within pay ranges in a pre-existing formal merit pay plan are not charged against the pay standard. *Provided*, That they are consistent with established procedures and past practices for administering such increases. Increases in the pay ranges themselves are chargeable, as are increases resulting from changes in established procedures or past practices for administering adjustments within pay ranges.