REGULATORY COMMISSION

OFFICE OF INSPECTOR GENERAL

FINAL INSPECTION REPORT

PRC RETENTION INCENTIVES

INSPECTION REPORT #20-01-A01
March 27, 2020

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Introduction

Background

According to the current *Postal Regulatory Commission* (PRC) *Retention Incentive Policy* (dated April 5, 2019), the PRC may pay a retention incentive to a current employee if the PRC determines that the qualifications of the employee or a mission need makes it essential to retain the employee and the employee would leave in the absence of a retention incentive.

The policy requires each retention incentive request be in writing. The policy also mandates that the individual possesses unique or high qualifications and is likely to leave PRC based on the employee receiving a competing job offer, intending to retire or documenting other comparable situations.

Under this policy, the PRC may terminate or reduce retention incentives for any of the following reasons:

- The employee's performance rating falls below "Meets Expectations",
- The employee leaves the position in which the incentive was authorized, or
- Other comparable situations.

The PRC Chairman is the approving official for all retention incentive payments.

Prior to the Office of Inspector General (OIG) announcing an inspection of PRC retention incentives on September 28, 2018, the PRC was in the process of revising the June 12, 2013 *Retention Incentive Policy*. The revisions included:

- A decrease to the maximum retention incentive from 25 percent to 10 percent of the employee's base salary;
- A required two-year written service agreement between the PRC and employee; and
- Simplified conditions for an employee to receive retention incentives.

The PRC finalized and re-issued its *Retention Incentive Policy* on April 5, 2019 including these revisions.

Objective, Scope and Methodology

The objective of this inspection is to evaluate the PRC's retention incentive practices and procedures. The scope of our review includes retention incentives processed during October 1, 2013 through September 30, 2018. To accomplish our objective, we:

- Interviewed PRC management and personnel regarding the processes involved with retention incentives, as well as their roles and responsibilities;

- Reviewed the *PRC Retention Incentive Policy*.

- Identified PRC retention incentives processed during October 1, 2013 through September 30, 2018;

- Reviewed Federal regulations for retention incentives and related OPM guidance;

- Benchmarked the *PRC Retention Incentive Policy* with Federal regulations; and

- Discussed findings and observations with PRC officials.

We conducted this review between October 17, 2018 and November 20, 2019 in accordance with the Council of the Inspectors General on Integrity and Efficiency's January 2012 *Quality Standards for Inspection and Evaluation*. We believe that the documentation obtained provides a reasonable basis for our conclusions based on our objectives.

Prior Audit/Inspection Coverage

The PRC OIG issued an audit report *Compensation Changes and Performance Awards* (Report Number 09-2-A02) on January 29, 2010. The audit found that the PRC generally supported expenses for compensation changes and performance awards. There were three recommendations to improve record retention and internal controls over the performance awards process. Management agreed with these recommendations.

The PRC OIG issued a follow-up inspection report *Compensation Changes and Performance Awards* (Report Number 18-02-A01) on September 28, 2018. The review determined that the PRC had effectively implemented recommendations 1 and 3 from the audit *Compensation Changes and Performance Awards* (Report Number 09-2-A02) dated January 29, 2010.

These reviews addressed compensation and performance awards processes generally, but did not specifically examine retention incentives.

Results

On April 5, 2019, the PRC updated the *Retention Incentive Policy* to improve the process for issuing retention incentives. However, we identified certain federal best practices that PRC should consider adopting.

Retention Incentives

Some PRC retention incentive practices were not consistent with federal policy. Specifically, the PRC authorized retention incentives to employees that were processed as merit increases. In contrast, 5 CFR, Part 575.309 (h) states that a retention incentive is not part of an employee's rate of basic pay for any purpose. The PRC's pay system does not distinguish between base pay and other kinds of pay. As a result, the PRC included retention incentives of $17,162 as part of two PRC employees' base salary. Federal policy requires retention incentives to be distinguished from base salary.

During October 1, 2013 through September 30, 2018, the PRC Chairman approved retention incentives for two employees totaling $17,162. We found the following:

- On January 23, 2016, a $5,000 salary increase was approved as a retention incentive but processed as a merit increase to an employee's base salary.

- On May 12, 2018, a $12,162 salary increase was approved as a retention incentive but processed as a merit increase to an employee's base salary.

The increases made to the employees' base salary were below the 25% retention incentive threshold in effect at the time.

The *PRC Retention Incentive Policy* dated June 12, 2013 stated that retention incentives should be paid on a bi-weekly basis. The PRC acknowledged that they did not follow the policy and indicated that retention incentives were improperly processed as one-time salary adjustments.

We recommend the PRC:

1. Adopt a system consistent with 5 CFR 575.309 (C)(3) to separate employee retention incentive payments from regular pay.

Management's Comments

Management agreed with the intent of the recommendation, while recognizing that the relevant regulation (including the statute underlying it - 5 U.S.C § 5754) does not apply to the PRC. The PRC management stated that they will no longer process retention incentives as merit pay increases and will distinguish retention pay from base pay for any new retention incentives. In addition, the PRC will implement a new retention incentive payment process in coordination with the Postal Service. The new process will be approved on a quarterly basis over the term of the service obligation similar to PRC's Student Loan Repayment Program procedures.

Evaluation of Management's Comments

Management's comments are responsive to the recommendation, and the action taken or planned should correct the issues identified.

Service Agreement

The *PRC Retention Incentive Policy* dated June 12, 2013 did not require a written service agreement for retention incentives between the employee and the agency. Instead, the employee signed a *Statement of Terms and Conditions* form which outlined the retention incentive payment and termination provisions between the employee and the PRC.

During our review, we were unable to locate signed *Statement of Terms and Conditions* forms in the files for two employees as required by PRC policy. PRC officials informed OIG that they failed to establish the *Statement of Terms and Conditions* forms for the two employees who received retention incentives.

Without requiring employees to sign retention incentive agreements, the PRC may not be able to recover funds inappropriately paid to employees.

On April 5, 2019, PRC management revised the policy to require:

- A two-year written service agreement between the PRC and the employee;
- The pro-rated repayment of retention incentives if an employee separates from the PRC prior to completing the service agreement; and
- The employee retains any retention incentives attributable to service completed if the PRC terminates the incentives.

The PRC's policy revisions will provide accountability and oversight of retention incentive funds and reduce the risk of improper retention incentives for ineligible employees. We are not making any recommendations regarding service agreements because action was taken during the review.

Annual Reviews

We also found that the PRC did not annually validate the reasons to continue retention incentives as required by policy. According to PRC policy dated June 12, 2013, the Commission Secretary must review all retention incentives with the appropriate recommending officials prior to the end of each fiscal year. The recommending officials must validate the need to continue each retention incentive and document it. If the recommending officials determine that the incentive is not necessary, the Commission Secretary would determine the best method to terminate it.

On November 7, 2018, the PRC informed the OIG that they used the annual performance assessment to evaluate and document retention incentive pay increases. However, the results of the annual performance assessments did not provide the reasons that PRC should continue issuing retention incentives.

The *PRC Retention Incentive Policy* dated April 5, 2019 did not address validating the need to continue retention incentives during the annual reviews.

Without an adequate policy, the PRC may not have an effective retention incentive program.

We recommend the PRC:

2. Update the employee retention policy to require regular reviews to validate the need to continue retention incentives and to document the results in the employee's official personnel folder.

Management's Comments

Management agreed with the recommendation and will update the *Performance Management Policy* and procedures to include annual reviews and validation of retention incentives provided to a PRC employee. It will be documented in the Employee Performance Plan and Assessment form. These updated procedures will be finalized by May 29, 2020 and implemented in the FY 20 Performance Management cycle.

Evaluation *of Management's Comments*

Management's comments are responsive to the recommendation, and the action taken or planned should correct the issues identified.

Performance Ratings

Pursuant to the *PRC Retention Incentive Policy* dated June 12, 2013, the PRC will terminate retention incentives if the employee's annual performance rating falls below "Meets Expectations". However, the PRC no longer assigns "Meets Expectation" as a performance rating.

Under OPM guidelines and 5 CFR § 575.305(d), a retention incentive may be paid only if the employee's rating of record is at least "Fully Successful" or equivalent. On May 18, 2018, the PRC issued an interim *Performance Management Policy* and amended its policy. Each supervisor is required to assign established performance ratings as follows:

1. Outstanding;
2. Exceeds Fully Successful;
3. Fully Successful;
4. Inconsistent;
5. Unsatisfactory; or
6. Too New to Rate/Not Rated.

Yet, the *PRC Retention Incentive Policy* dated April 5, 2019 continues to require "Meets Expectation" as one of the performance rating factors, which is inconsistent with the PRC interim *Performance Management Policy*.

The PRC should update the *Retention Incentive Policy* to be consistent with the PRC interim *Performance Management Policy* and 5 CFR § 575.305(d).

We recommend the PRC:

3. Ensure the PRC policies use consistent language to denote performance ratings.

Management's Comments

Management agreed with the recommendation and will update the *Retention Incentives Policy* to reflect the accurate language for the performance rating no later than May 29, 2020.

Evaluation *of Management's Comments*

Management's comments are responsive to the recommendation, and the action taken or planned should correct the issues identified.

Employee Eligibility

PRC policy provides that Presidential appointees and individuals appointed to executive-level, non-career positions as well as the Inspector General are not eligible for retention incentives.

On April 5, 2019, PRC policy was updated to clarify that non-career employees, including Special Assistant, Confidential Assistant and other employees hired by and reporting directly to a commissioner, are ineligible for retention incentives.

We are not making any recommendations regarding employee eligibility because action was taken during the review.

POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Secretary and Administration

March 6, 2020

Mr. Jack Callender
Inspector General
Postal Regulatory Commission
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Washington, DC 20091

RE: Inspection Report 20-02-A01 – PRC Retention Incentives

Dear Mr. Callender:

Thank you for the opportunity to review your November 21, 2019 draft of the PRC Retention Incentives inspection report, #20-02-A01.

Commission management completed a review of your inspection report and addresses each recommendation below. As an initial matter, the Commission is exempt from the majority of Federal laws governing budgets and funds, including many Title 5 requirements (consistent with the Postal Service), and specifically the statute and regulations concerning retention incentive payments used as the basis for your inspection report. *See* 39 U.S.C. §§ 410 and 504(e). However, in this instance, despite not being required by law, the Commission plans to modify its retention incentive policy and procedures for payment of retention incentives as set forth below.

1) Recommendation: Adopt a system consistent with 5 C.F.R. § 575.309(C)(3) to separate employee retention incentives from regular pay.

   Response: Commission management agrees with the intent of the recommendation, while recognizing that this regulation (including the statute underlying it – 5 U.S.C. § 5754) does not apply to the Commission.

   In response to the inspection recommendation, the Commission will no longer process retention incentives as merit pay increases and will distinguish retention pay from base pay for any new retention incentives. To accomplish this change, the Commission will implement a new process for payment of retention incentives in coordination with the Postal Service (the Commission's shared service provider). Through this new process, retention incentive payments will be made to an approved employee on a quarterly basis over the term of the service obligation, similar to the payment process for student loans under the Commission's Student Loan Repayment Policy (SLRP). As the process for retention payments will be identical to how the SLRP payments are administered, the Commission will be able to implement this process for any new retention incentive payments.

2) Recommendation: Update the employee retention policy to require regular reviews to validate the need to continue retention incentives and to document the results in the employee's official personnel folder.

   Response: The Commission's Performance Management process will be revised to include the annual review and validation of retention incentives provided to an employee. This annual review and validation will be documented in the Employee Performance Plan and Assessment form, which is part of the employee's personnel folder. The form will be updated to include a section for this review and validation. The updated procedures and form, including corresponding changes to the Retention Incentive Policy, will be finalized by May 29, 2020 and implemented in the FY 2020 Performance Management cycle.

3) Recommendation: Ensure the PRC policies use consistent language to denote performance rating.

   Response: The Office of the Secretary will update the Retention Incentive Policy to reflect the accurate language for the performance rating no later than May 29, 2020.

Sincerely,

Erica A. Barker
Secretary and Chief Administrative Officer
Office of the Secretary and Administration