

also proposes to provide guidance and information to agencies and employees on request. OPM would provide legal interpretations on technical FLSA issues (binding on decision-makers in relevant causes) and also would provide general technical assistance (non-binding). OPM's regional offices would be available to provide general assistance but not legal interpretations.

The authority of GAO to settle claims against the United States is contained in 31 U.S.C. 3702 (b)(1) which provides that a claim filed with the Office must be received within 6 years after the date the claim accrues "except * * * as provided by * * * another law." In a decision rendered on May 23, 1994 (Joseph M. Ford, B-250051), GAO announced that the 2-year statute of limitations (3 years for willful violations) as provided in the Portal-to-Portal Act of 1947, as amended, 29 U.S.C. § 255(a), would apply to all FLSA claims with GAO that have not been settled prior to that date and all claims filed with GAO after that date. Section 640 of Public Law 103-329, signed September 30, 1994, provides for a 6-year statute of limitations to any claim of a Federal employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) for claims filed before June 30, 1994. Under this provision, claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations, based on the May 23 Comptroller General decision. The 2-year statute of limitations would now apply to employees covered by NGP's when those NGP's do not exclude grievances over FLSA matters; and to employees not covered by an NGP whose pay claims are reviewable under other agency-based review or grievance systems. The GAO decision would not apply to claims that arise solely out of the title 5 overtime provisions; that is, the 6-year limitation period still applies to title 5 claims.

The proposed rule provides for agency maintenance of records of compliance adjudication and would require agencies to forward to OPM copies of final administrative decisions on FLSA adjudication activities. OPM would utilize this information to help ensure that the requirements of the Act are being met by agencies and employees and to help evaluate how well the adjudication system is working.

The proposed rule explains that complaints covered by OPM regulations do not include matters pertaining to equal pay under 29 U.S.C. 206(d). Equal pay matters are resolved by procedures established by the Equal Employment Opportunity Commission.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 551

Government employees, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend part 551 as follows:

1. The title and authority citation for part 551 is revised to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

Authority: Sec. 4(f) of the *Fair Labor Standards Act of 1938*, as amended by Pub. L. 93-259, 88 Stat. 55 (29 U.S.C. 204f); Sec. 210 of the *Federal Employees Pay Comparability Act of 1990*, Pub. L. 101-509, 104 Stat. 1460.

2. Subpart F is added to read as follows:

Subpart F—Complaints and Compliance

- 551.601 Purpose.
- 551.602 Administrative complaint forums.
- 551.603 Time limits.
- 551.604 Employee responsibilities.
- 551.605 Agency responsibilities.
- 551.606 OPM responsibilities.
- 551.607 Judicial review.
- 551.608 OPM addresses.

Subpart F—Complaints and Compliance

§ 551.601 Purpose.

This subpart constitutes OPM's complaint and compliance program for the resolution of matters arising under the Act. This subpart, established under OPM's authority to administer the Act as noted in § 551.101, sets forth administrative complaint systems available to Federal employees. The subpart also describes OPM's role in assisting agencies to comply with the Act.

§ 551.602 Administrative complaint forums.

(a) *Negotiated grievance procedures.* An individual covered by a negotiated grievance procedure (NGP) established under section 7121 of title 5, United States Code must utilize that procedure to seek review of FLSA complaints provided the NGP does not exclude such matters.

(b) *Agency-based review or grievance systems.* An individual not covered by an NGP described in paragraph (a) of this section may file a request for review of an agency's FLSA determination under an agency-based review or

grievance system. Decisions under such agency-based systems must be in accordance with the Act and the conditions and criteria prescribed by this part for administration of the Act as well as any legal interpretations issued under § 551.606. These procedures do not cover matters concerning "equal pay" under section 206(d) of title 29, United States Code (which are subject to consideration by the Equal Employment Opportunity Commission under its regulations at part 1620 of title 29, Code of Federal Regulations).

(c) *General Accounting Office.* An individual not covered by an NGP described in paragraph (a) of this section may file a claim concerning a dispute under the Act with the GAO under procedures described by GAO at part 30 of title 4, Code of Federal Regulations. Such a complaint may be filed after receiving an agency decision under paragraph (b) of this section or in lieu of requesting a review under paragraph (b).

§ 551.603 Time limits.

(a) *Administrative review.* Complaints involving pay claims under the Act and filed under §§ 551.602 (a) and (b) of this subpart must meet the time limits and procedural requirements of the complaint system used.

(b) *Statute of limitations.* Notwithstanding any time limitations contained in the system being used, pay claims under the Act are subject to the 2-year statute of limitations provided in section 255(a) of title 29, United States Code for claims filed on or after June 30, 1994. This statutory limit is satisfied (or tolled) when:

- (1) A claim is received by the agency out of whose activities the claim arose within 2 years from the date the claim or any portion of the claim accrued; or
- (2) A claim is filed directly with GAO within 2 years from the date the claim or any portion of the claim accrued.

§ 551.604 Employee responsibilities.

(a) *Filing of claims.* The employee has the burden of proving compliance with § 551.603(b) by providing documentation showing the date when the agency received his or her claim. Absent such documentation, any back payments on the claim can be made only to cover a period up to 2 years prior to the date of actual payment.

(b) *Hours-of-work complaints.* The employee has the burden to provide evidence from which a reasonable inference can be drawn that he or she was improperly compensated for a certain amount and extent of work performed. A reasonable inference may