can be based on a tuition sliding scale such as that used in the military formula (10 U.S.C. 1791–1798); a formula based on a specific percentage of total family income the family is expected to pay with the agency paying the remaining amount; or a formula based on a specific percentage of child care tuition the family is expected to pay with the agency paying the remaining amount. Each of these approaches is based on different philosophical assumptions and it will be up to the agency to determine which model or models best fits its needs. The models are described in detail in OPM's guidance.

(d) Besides total family income, you may consider extraordinary financial situations to determine eligibility and the subsidy amount.

§ 792.225 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or tuition criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the tuition assistance eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.226 Do child care subsidies get paid to the Federal employee using the child care?

No. The child care subsidy is paid to the child care provider. If you choose to have an organization administer your program (see § 792.225), the subsidy is paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

§ 792.227 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee utilizing the reduced tuition has enrolled his or her child in the child care center or family child care home?

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports.

§ 792.228 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies would be pooled together for the benefit of the employees qualified for tuition assistance and whose children are enrolled at the Federally sponsored child care center. The designated organization administering the program (§ 792.225) would then make the individual tuition assistance determinations for the eligible Federal employees based on the tuition assistance model chosen by the agencies. Agencies in the multi-tenant space must agree on the selection of one tuition assistance model for that particular child care center. If an agency chooses to administer its own program, it would not be required to pool its funds with the other agencies or use the model they have chosen for pooled funds. In either case, because the law requires that your funds be used for your civilian employees, the tracking system must include information about the number and income level of your employees who were able to make use of child care services as a result of this law.

§ 792.229 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2000.

§ 792.230 Can these funds be used for children of Federal employees who are already enrolled in child care?

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

§ 792.231 Can we place special restrictions or requirements on the use of these funds, how else can we use these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in one of the following ways:

(1) Fund Federal employees using family child care homes;

(2) Fund Federal employees using your on-site child care center;

(3) Fund Federal families using community, non-Federal child care centers; or

(4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

§ 792.232 May we use the funds to improve the physical space of the family child care homes or child care centers?

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

§ 792.233 For how long is the law effective?

The law is effective for one year, ending September 30, 2000.

§ 792.234 Who will oversee the disbursement and use of funds?

You will be responsible for tracking the utilization of these funds. OPM's guidance contains details about the oversight of this program and the mandatory reporting requirements.

[FR Doc. 99–33150 Filed 12–20–99; 4:37 pm]

BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) proposes to amend its rules of practice and procedure with respect to attorney fee proceedings to provide reimbursement to a prevailing appellant's attorney at his customary billing rate if that rate is consistent with the prevailing community rate where the attorney ordinarily practices. The intent of the proposed amendment is to provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

DATES: Submit comments by February 7, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board requests comments on a proposal to amend its rule at 5 CFR 1201.203, which governs attorney fee proceedings, to provide that

reimbursement of a prevailing appellant's attorney fees will be at the attorney's customary billing rate if that rate is consistent with the prevailing community rate for similar services where the attorney ordinarily practices. The Board also invites suggestions as to alternatives that might carry out the Board's intent of establishing a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

The current regulation at 5 CFR 1201.203(a)(3) requires submission of evidence of ''the prevailing community rate for similar services that will establish a market value for the attorney's services.'' The regulation does not define the ''community'' to be used in determining the prevailing community rate. Under Board precedent, the prevailing community rate is based on the geographic location where the hearing was held. *Manley* v. *Department of the Air Force,* 67 M.S.P.R. 467, 472–473 (1995).

Applying the general rule that the hearing location determines the reimbursement rate for the attorney can result in inequitable reimbursement. An attorney may be reimbursed at a lower rate than that which prevails at the location of his practice if the prevailing rate for similar services in the community where the hearing is (or would have been) held is lower than that at the location of his practice. It is also possible that an attorney could be reimbursed at a higher rate than that which prevails at the location of his practice if the prevailing rate for similar services at the hearing location is higher than that at the location of his practice. But see *Brown* v. *Department of Health and Human Services,* 50 M.S.P.R. 523 (1991).

The Board's current rule is akin to the Federal courts' ''forum rule.'' In Federal court litigation, the place where the district court sits and where the appeal is filed is one location, and, in that context, that forum makes sense as the relevant community for determining rates. That model, however, no longer fits MSPB cases. In addition to an in-person hearing before an administrative judge, MSPB proceedings currently may be conducted by telephone, mail, facsimile, or video conference. In some cases, no hearing is held. In such situations, the parties, their representatives, and the administrative judge may all be in different geographic locations, and the attorney's work may well be done primarily in a location other than that in which an in-person hearing would have been held.

To reflect the realities of practice before the Board and provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees, the Board is considering changing its regulation at 5 CFR 1201.203(a)(3) to reimburse a prevailing appellant's attorney at his customary billing rate, with evidence that the rate is consistent with the prevailing rate for similar services in the community in which the attorney ordinarily practices. The proposed rule is similar to the model rule recommended by the Administrative Conference of the United States in implementing the Equal Access to Justice Act (EAJA), 46 FR 32900, 32904–32906 (October 2, 1981) (''prevailing market rate'' for determining allowable attorney fees).

The Board is publishing this rule as a proposed rule pursuant to 5 U.S.C. 1204(h). The Board has made a determination under the Regulatory Flexibility Act, Pub. L. 96–354, 95 Stat. 1164, 5 U.S.C. 601–612, that this proposed regulatory action would not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 1201.

Administrative practice and procedure, Civil rights, Government employees. Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 would continue to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Amend § 1201.203 by revising paragraph (a)(3) to read as follows:

§ 1201.203 Proceedings for attorney fees.

(a) * * *

(3) A statement of the attorney's customary billing rate for similar work, with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

* * * * *

Dated: December 20, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–33357 Filed 12–22–99; 8:45 am]

BILLING CODE 7400–01–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052–AB91

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Stock Issuances

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is proposing to amend regulations to allow Farm Credit System (System) service corporations to sell stock to non-System entities; and System institutions to adopt bylaws allowing the issuance of unlimited amounts of certain classes of equities.

The purpose of our proposal is to provide System institutions additional opportunities to fulfill their borrowers' needs through service corporations and more efficient issuance of equities related to earnings distributions and transfers of capital. We are also taking this opportunity to make a technical change to one of our regulations pertaining to disclosure requirements.

DATES: Please send your comments to us by January 24, 2000.

ADDRESSES: You may send comments by electronic mail to ''reg-com@fca.gov'' through the Pending Regulations section of our website at ''www.fca.gov.'' You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Joy Strickland, Senior Counsel, or Howard Rubin, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed rule are to:

- Increase the flexibility and usefulness of service corporations;
- Provide adequate disclosures to investors in service corporations organized to exercise the authorities