

(2) A higher rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a lower rate within a General Schedule grade.

Employee means an employee of an agency to whom this subpart applies.

Existing rate of basic pay means the rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase.

GM employee means an employee who was covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, on October 31, 1993 (and therefore became covered on November 1, 1993, by section 4 of Pub. L. 103-89, the Performance Management and Recognition System Termination Act of 1993), and who continues thereafter to occupy a position as a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code) in the same grade of the General Schedule and in the same agency without a break in service of more than 3 calendar days. Any reference to employees, grades, positions, or rates of basic pay under the General Schedule shall include GM employees for the purposes of subchapter I and III of chapter 53 of title 5, United States Code.

Higher grade means a General Schedule grade above the last previous General Schedule grade or its equivalent held by the employee.

Highest previous rate means—

(1) The highest actual rate of basic pay previously received by an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial); a Government corporation, as defined in 5 U.S.C. 103; the United States Postal Service or the Postal Rate Commission; or the government of the District of Columbia (except as provided in § 531.203(d)(2)(v) of this part); without regard to whether the position was subject to the General Schedule; or

(2) The actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the General Schedule.

Moved involuntarily means the movement of the incumbent of a position in

a nonappropriated fund instrumentality under the jurisdiction of the Department of Defense or the Coast Guard, as described in 5 U.S.C. 2105(c), with the position when it is moved to the civil service employment system of the Department of Defense or the Coast Guard, respectively.

New appointment means the first appointment, regardless of tenure, as an employee of the Federal Government or the Government of the District of Columbia.

Promotion means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a higher General Schedule grade; or

(2) A lower rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a higher rate within a General Schedule grade.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

Reassignment means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion.

Reemployment means an employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

Transfer means a change of an employee, without a break in service of 1 full workday, from one branch of the Federal Government (executive, legislative, or judicial) to another or from one agency to another.

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§ 531.203 General provisions.

(a) *New Appointments.* Except as provided by section 5333(a) of title 5, United States Code, and paragraph (b) of this section, a new appointment is made at the minimum rate of the grade, or when the minimum rate of the grade of a position has been set under part 530 of this chapter, a new appointment is made at the minimum rate set under part 530 of this chapter.

(b) *Superior qualifications appointments.* (1) A “superior qualifications appointment” means an appointment made at a rate above the minimum rate of the appropriate General Schedule grade under authority of section 5333 of title 5, United States Code, because of the superior qualifications of the candidate or a special need of the agency for the candidate’s services.

(2) An agency may make a superior qualifications appointment by new appointment or by reappointment except that when made by reappointment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the District of Columbia (other than—

(i) Employment with the Government of the District of Columbia when the candidate was first appointed by the DC Government on or after October 1, 1987;

(ii) Employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code;

(iii) Employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program, or effected as part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree;

(iv) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with section 213.3202 of this chapter;

(v) Employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service;

(vi) Employment which is neither full-time employment nor the principal employment of the candidate; or

(vii) Employment under the Intergovernmental Personnel Act).

(3) In determining whether an employee should receive a superior qualifications appointment and, if so, at what level the employee’s pay should be set, the agency must consider the

possibility of authorizing a recruitment bonus as provided in part 575 of this chapter.

(4) Each agency that makes superior qualifications appointments must establish documentation and record-keeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include—

(i) The superior qualifications of the individual or special need of the agency that justified use of this authority;

(ii) The factors considered in determining the individual’s existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and

(iii) The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

(5) Each agency using the superior qualifications authority must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, these regulations, and agency policies.

(c) *Maximum payable rate rules.* In determining an employee’s rate of basic pay upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, the following rules apply unless the employee is entitled to a higher rate under the promotion provisions of 5 U.S.C. 5334(b) and § 531.204(a) of this part or the grade and pay retention provisions of 5 U.S.C. 5362 and 5363 and part 536 of this chapter:

(1) Except as provided in paragraph (c)(2) of this section, the maximum rate of basic pay that may be paid a General Schedule employee shall be determined as follows:

(i) Compare the employee’s highest previous rate (expressed as an annual rate) with the rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed.

(ii) Identify the lowest step of the grade in which pay is currently being fixed, for which the rate of basic pay was equal to or greater than the employee’s highest previous rate at the time the highest previous rate was earned. If the employee’s highest previous rate was greater than the maximum rate for the grade in which pay

is being fixed, the maximum rate of basic pay that may be paid to the employee is the maximum rate for that grade.

(iii) Identify the current rate of basic pay for the step identified under paragraph (c)(1)(ii) of this section. This rate is the maximum rate of basic pay that may be paid the employee.

(2) The maximum rate of basic pay that may be paid a GM employee (as defined in § 531.202) shall be determined as follows: Compare the employee's highest previous rate (expressed as an annual rate) with the range of rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed. If the employee's highest previous rate was less than or equal to the minimum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the minimum rate for the grade in which pay is being fixed. If the employee's highest previous rate was equal to or greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid the employee is the maximum rate for that grade. If the employee's highest previous rate was greater than the minimum rate, but less than the maximum rate for the grade in which pay is being fixed, the maximum payable rate shall be determined as follows:

(i) Using the pay rates in effect at the time the highest previous rate was earned for the grade in which pay is being fixed, find the difference between the employee's highest previous rate and the minimum rate for that grade—(a). Find the difference between the maximum rate and the minimum rate for the same grade—(b). Divide (a) by (b); carry the result to the seventh decimal place; and truncate, rather than round, the result. This quotient—(c)—is a factor representing the employee's relative position in the rate range.

(ii) Using current pay rates, find the difference between the maximum rate and the minimum rate for the grade in which pay is being fixed—(d). Multiply (d) times the factor (c). Add the product of this multiplication to the minimum rate for the grade in which pay is being fixed. This figure, rounded to

the next higher whole dollar, is the maximum rate of basic pay that may be paid the employee.

(d) *Basis for highest previous rate.* (1) Except as otherwise provided in this paragraph, the highest previous rate may be based on a regular tour of duty at any rate of basic pay received by an individual while serving under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one or more appointments without a break in service.

(2) The highest previous rate may not be based on the following:

(i) A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;

(ii) A rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade;

(iii) A rate received in a position from which the employee was reassigned or reduced in grade for failure to complete satisfactorily a probationary period as a supervisor or manager;

(iv) A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;

(v) A rate received by an employee of the government of the District of Columbia who was first employed by that government on or after October 1, 1987;

(vi) A rate received solely during a period of interim relief under the interim relief provisions of 5 U.S.C. 7701(b)(2)(A); or

(vii) A special rate established under 5 U.S.C. 5305 and part 530 of this chapter, part 532 of this chapter, or other legal authority (other than section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101-509, 104 Stat. 1465), unless, in a reassignment to another position in the same agency—

(A) The special rate of pay is the employee's current rate of basic pay; and

(B) An agency official specifically designated to make such determinations finds that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. Such determinations shall be made on a case-by-case basis, and in each case

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the agency shall make a written record of its positive determination to use the special rate as an employee's highest previous rate.

(3) In the case of an employee who has received or is receiving a special rate established under 5 U.S.C. 5305 and part 530 of this chapter, part 532 of this chapter, or other legal authority (other than section 403 of FEPCA); who is placed in a position in which a special rate does not apply; and for whom the special rate is *not* used as the highest previous rate under paragraph (d)(2)(vii) of this section; the highest previous rate may be based on the rate of basic pay for the step (or relative position) in the regular rate range that corresponds to the employee's existing step (or relative position) in the special rate range for the employee's current grade or pay level.

(e) *Agency classification action.* When an agency regrades a position to a grade higher than the one to which the position had been classified by Office action, and when subsequent to the regrading, the Office again classifies the position to the grade which it had originally assigned the position, the rate attained by the employee in the higher grade may not be used as his or her highest previous rate.

(f) *Simultaneous actions.* (1) General pay adjustments must be processed before any individual pay action that takes effect at the same time. General pay adjustments include annual adjustments under 5 U.S.C. 5303, adjustments in locality rates of pay under subpart F of this part, adjustments in special law enforcement adjusted rates of pay under subpart C of this part, adjustments in special salary rates under 5 U.S.C. 5305 or similar provision of law (including section 403 of FEPCA), increases in retained rates under part 536 of this chapter, and increases in continued rates under subparts C and G of this part.

(2) Pay adjustments (other than general pay adjustments) that take effect at the same time must be processed in the order that gives the employee the maximum benefit. When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is

deemed to be the employee's existing rate of basic pay.

(g) *Status as a GM employee.* (1) An employee retains status as a GM employee (as defined in § 531.202) when detailed to any position or when reassigned to another General Schedule position in which the employee continues to be a supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of title 5, United States Code).

(2) An employee permanently loses status as a GM employee if the employee is promoted (including a temporary or term promotion), transferred, reduced in grade, reassigned to a position in which the employee will no longer be a supervisor or management official, or has a break in service of more than 3 calendar days.

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§ 531.204 Special provisions.

(a) *Promotions and transfers.* (1) The requirements of section 5334(b) of title 5, United States Code, apply only to an employee who is promoted or transferred from a position in one grade of the General Schedule to a position in a higher grade of the General Schedule.

(2) For the purpose of section 5334(b) of title 5, United States Code, an employee's "existing rate of basic pay" includes any applicable special rate established under section 5305 of title 5, United States Code, or law enforcement special rate established under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101-509, 104 Stat. 1465).

(3) When an employee at grade GS-1 or grade GS-2 is promoted or transferred to a higher grade, the amount of a step increase above step 10 of the employee's grade equals the amount of the increment between step 9 and step 10 of the grade from which promoted.

(b) *Classification decisions.* When a classification decision is made effective retroactively under part 511 of this chapter, the agency shall treat the corrective personnel action affecting the