

**§ 530.201**

**5 CFR Ch. I (1–1–03 Edition)**

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Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively;

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981.

**Subpart A [Reserved]**

**Subpart B—Aggregate Limitation on Pay**

SOURCE: 56 FR 12835, Mar. 28, 1991, unless otherwise noted.

**§ 530.201 Purpose.**

This subpart provides regulations to implement 5 U.S.C. 5307, which limits an employee’s aggregate compensation to the rate payable for level I of the Executive Schedule at the end of the calendar year.

**§ 530.202 Definitions.**

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

*Aggregate compensation* means the total of—

- (1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom chapter 51 of title 5, United States Code, applies;

- (2) Locality-based comparability payments under 5 U.S.C. 5304; continued rate adjustments under subpart G of part 531 of this chapter; or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509);

- (3) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code;

- (4) Premium pay under subchapter V of chapter 55 of title 5;

- (5) Incentive awards and performance-based cash awards under chapters 45, 53, and 54 of title 5, United States Code;

- (6) Recruitment and relocation bonuses under 5 U.S.C. 5753;

- (7) Retention allowances under 5 U.S.C. 5754;

- (8) Supervisory differentials under 5 U.S.C. 5755;

- (9) Post differentials under 5 U.S.C. 5925;

- (10) Danger pay allowances under 5 U.S.C. 5928;

- (11) Allowances based on environmental conditions for employees stationed outside the continental United States or in Alaska under 5 U.S.C. 5941(a)(2);

- (12) Physicians comparability allowances under 5 U.S.C. 5948;

- (13) Continuation of pay under 5 U.S.C. 8118; and

- (14) Other similar payments authorized under title 5, United States Code, excluding back pay due to an unjustified personnel action under 5 U.S.C. 5596; overtime pay under the Fair Labor Standards Act of 1938, as amended, and part 551 of this chapter; severance pay under 5 U.S.C. 5595; and lump-sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552.

*Basic pay* means the total amount of pay received during any 1 calendar year at the rate fixed by law or administrative action for the position held by an employee, including night and environmental differentials for prevailing rate employees under 5 U.S.C. 5343(f) and §532.511 of this part, respectively, but before any deductions and exclusive of additional pay of any other kind.

*Discretionary payment* means a payment that an agency has discretion to pay or not to pay to an employee, including a retention allowance but excluding any other payment that is preauthorized to be paid to an employee at a regular fixed rate each pay period.

*Employee* has the meaning given that term in 5 U.S.C. 2105.

*Estimated aggregate compensation* means the agency's projection of the aggregate compensation an employee actually will receive during a calendar year based upon known factors—i.e., the total amount of basic pay the employee will be paid, plus any lump-sum payment of excess amounts from a previous calendar year; the total amount of nondiscretionary payments to which the employee is or is projected to be entitled; and the total amount of discretionary payments the employee is authorized to receive.

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**§ 530.203 Administration of aggregate limitation on pay.**

(a) No executive branch employee (or General Schedule employee in the legislative or judicial branch) may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year to the extent such payment, in combination with the employee's basic pay (whether received under title 5 or otherwise), would cause the employee's aggregate compensation to exceed the rate payable for level I of the Executive Schedule on the last day of that calendar year.

(b) The limitation described in paragraph (a) of this section applies to the total amount of aggregate compensation actually received by an employee during the calendar year without regard to the period of service for which such compensation is received.

(c) Except in the case of a retention allowance, at the time a discretionary payment is authorized for an employee, the employee may not receive any portion of such payment that, when added to the estimated aggregate compensation the employee is projected to re-

ceive, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year. Any portion of a discretionary payment deferred under this paragraph shall become available for payment as provided in § 530.204. The authorization and payment of a retention allowance are governed by the rules set forth in subpart C of part 575 of this chapter.

(d) Nondiscretionary payments may not be deferred or discontinued for any period of time in order to make a discretionary payment that would otherwise cause an employee's pay to exceed any limitation described in or established by this section.

(e) If the estimated aggregate compensation to which an employee is entitled, after deferral of discretionary payments as required by paragraph (c) of this section, exceeds the rate in effect for level I of the Executive Schedule at the end of the calendar year, the agency shall defer all nondiscretionary payments (other than basic pay) at the time when otherwise continuing such payments would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year. Any portion of a nondiscretionary payment deferred under this paragraph shall become available for payment as provided in § 530.204.

(f) If an agency makes an incorrect estimate of aggregate compensation at an earlier date in the calendar year, the sum of an employee's remaining payments of basic pay (which may not be deferred) may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the rate for level I of the Executive Schedule. In this case, the employee will become indebted to the Federal Government for any amount paid in excess of the level I aggregate limitation. To the extent that the excess amount is attributable to amounts that should have