

§ 534.305

5 CFR Ch. I (1-1-03 Edition)

§ 534.305 Pay periods and computation of pay.

(a) The requirements of 5 U.S.C. 5504, must be applied to employees of temporary organizations. This includes requirements for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate.

(b) Employees of temporary organizations must receive basic pay on an hourly basis.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

SOURCE: 54 FR 2987, Jan. 23, 1989, unless otherwise noted.

§ 534.401 Definitions and setting individual basic pay.

(a) *Definitions.* In this subpart—

Agency means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

ES rate means one of the five or more rates of basic pay established by the President under 5 U.S.C. 5382 for the Senior Executive Service.

Senior executive means a member of the Senior Executive Service (SES).

(b) *Setting pay upon initial appointment.* (1) An appointing authority may set the rate of pay of an individual at any ES rate upon initial appointment to the SES except under the conditions described in paragraph (b)(2) of this section.

(2) Subject to paragraph (b)(4) of this section, if an individual who receives an initial career appointment in the SES—

(i) Has at least 5 years of current continuous service in one or more positions in the competitive service and is appointed without any break in service, the initial rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the appointment.

(ii) Holds a position that is converted from the competitive service to a career reserved position in the SES and as of the conversion date the individual has at least 5 years of current continuous service in one or more positions in the competitive service, the initial

rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the conversion of the position.

(3) For the purpose of paragraph (b)(2) of this section, *rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee entitled to grade or pay retention, the employee's retained rate of pay, before any deductions and exclusive of additional pay of any other kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

(4) If pay setting is subject to paragraph (b)(2) of this section and the rate of basic pay in the individual's current position exceeds the maximum ES rate, then the initial rate of pay shall be set at the maximum ES rate.

(c) *Adjusting pay while in the SES.* (1) The pay of a senior executive may not be adjusted by an agency more than once in any 12-month period. A pay adjustment includes:

(i) The assignment of an ES rate upon initial appointment to the SES;

(ii) The change from one ES rate to another while employed in the SES; or

(iii) The assignment of an ES rate upon reappointment to the SES following a break in SES service if the new ES rate is different from the executive's former rate or if the break in service exceeds 12 months.

(2) An appointing authority may raise the pay for a senior executive any number of ES rates at the time of an adjustment.

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of an adjustment. Restrictions on reducing pay of career senior executives are in paragraph (f) of this section.

(d) *Setting pay upon transfer.* An appointing authority may set the pay of a senior executive transferring from another agency at any ES rate. If the pay is set at the same rate the executive had in his or her former agency, the action is not considered a pay adjustment for purposes of paragraph (c) of this section.

(e) *Setting pay following a break in SES service.* (1) General.

(i) An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment to the SES if:

(A) There has been a break in SES service of more than 30 days;

(B) There has been a break in SES service of 30 days or less, but the executive's last ES pay adjustment was more than 12 months earlier; or

(C) The reappointment is in a different agency.

(ii) Otherwise, pay must be set at the executive's former ES rate and may not be adjusted until 12 months from the last SES pay adjustment, in accordance with paragraph (c) of this section.

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. These provisions apply to a former career senior executive who is reinstated under 5 CFR 317.703.

(i) If the individual elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, only if 12 months have elapsed since the last SES pay adjustment; and the adjustment must be in accordance with paragraph (c) of this section.

(ii) If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing pay of career senior executives.*

(1) The ES rate of a career senior executive may be reduced involuntarily in the appointee's agency or upon a transfer of function to another agency only:

(i) For performance reasons, i.e., the executive has received a less than fully successful performance rating under 5 CFR part 430, subpart C, or has been conditionally recertified or not recertified under 5 CFR 317.504; or

(ii) As a disciplinary action resulting from conduct related activity, e.g., misconduct, neglect of duty, or malfeasance.

(2) If the pay reduction is for performance reasons, the agency shall provide the executive at least 15 days' advance written notice.

(3) If the pay reduction is for disciplinary reasons, the agency shall:

(i) Provide the executive at least 30 days' advance written notice;

(ii) Provide a reasonable time, but not less than 7 days, for the executive to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(iii) Allow the executive to be represented by an attorney or other representative; and

(iv) Provide the executive a written decision and specific reasons therefor at the earliest practicable date.

[54 FR 2987, Jan. 23, 1989, as amended at 58 FR 58261, Nov. 1, 1993; 60 FR 6389, Feb. 2, 1995; 61 FR 3542, Feb. 1, 1996]

§ 534.402 Aggregate compensation.

Senior executives are subject to the aggregate compensation limitations in subpart B of part 530 of this chapter.

[56 FR 18662, Apr. 23, 1991]

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the individual must have been an SES career appointee as of the end of the performance appraisal period; and the individual's most recent performance rating of record under part 430, subpart C, of this chapter for the appraisal period must have been "Fully Successful" or higher.

(2) Individuals eligible for a performance award include:

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the salary of the individual is above the ES-6 pay rate, the ES-6 rate is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

(ii) A reemployed annuitant with an SES career appointment.

(iii) An SES career appointee who is on detail. If the detail is to another