

## Compensation Flexibilities

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### INTRODUCTION

The Federal Government uses its competitive advantage to attract and keep candidates who will contribute to the success of the organization. The compensation flexibilities the Government uses add to the other flexibilities (e.g., work schedules, benefits, awards) available to employees to make the Federal Government an employer of choice.

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### TYPES OF COMPENSATION FLEXIBILITIES

This tool addresses the following areas of compensation:

- Agency-based compensation authorities
- Compensation authorities available with Office of Personnel Management (OPM) and/or Office of Management Budget (OMB) approval
- Premium pay and allowances.

Associated web links are included with compensation descriptions as appropriate.

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### AGENCY-BASED COMPENSATION AUTHORITIES

Agencies have considerable discretionary authority to provide additional direct compensation in certain circumstances to support their employees. These flexibilities are in addition to basic salary and Government contributions to health insurance, the Thrift Savings Plan, etc. The following information summarizes these compensation flexibilities:

- Recruitment bonuses
- Relocation bonuses
- Retention bonuses
- Superior qualifications and special qualifications appointments
- Highest previous rate
- Waiver of dual pay limitation
- Compensatory time of for travel
- Travel and transportation expenses for interviews and/or new appointments
- Advanced payments for new appointees
- Federal student loan repayments
- Premium pay, exceptions to the biweekly limitation.

Authorities that only apply to the Federal Wage System are grouped together.

## Compensation Flexibilities (continued)

### Recruitment Bonuses\*

Agencies may pay a recruitment bonus to a newly appointed employee to fill a position that would otherwise be difficult to fill. In return, the employee must sign a service agreement with the agency. A recruitment bonus may be used in combination with superior qualifications appointments and may be paid to employees covered by a special rate. Recruitment bonuses must be paid in accordance with the agency's recruitment bonus plan. Recruitment bonuses are subject to the limit on aggregate compensation established by 5 U.S.C. 5307 and 5 CFR part 530, subpart B.



Additional information on recruitment bonuses may be found at:

<http://www.opm.gov/oca/pay/HTML/RECBONFS.HTM>.  
(5 U.S.C. 5753; 5 CFR part 575, subpart A)

### Relocation Bonuses\*

Agencies may pay a relocation bonus to an existing employee who must relocate to fill a position that would otherwise be difficult to fill. In return, the employee must sign a service agreement (of any length) with the agency. A relocation bonus may be paid to employees receiving a special rate. Relocation bonuses must be paid in accordance with the agency's relocation bonus plan. Relocation bonuses are subject to the limit on aggregate compensation established by 5 U.S.C. 5307 and 5 CFR part 530, subpart B.



Additional information on relocation bonuses may be found at:

<http://www.opm.gov/oca/pay/HTML/RELBONFS.HTM>.  
(5 U.S.C. 5753; 5 CFR part 575, subpart B)

\* Under the provisions of Section 101(a) of the Federal Workforce Flexibility Act of 2004, agencies are able to use recruitment, relocation, and retention bonuses in more strategic ways. These provisions are became effective May 1, 2005.

## Compensation Flexibilities (continued)

**Retention Bonuses\*** Agencies may make continuing payment to individual employees and/or to a group or category of employees. Agencies must determine that the unusually high or unique qualifications of the employees or a special need of the agency for the employees' services makes it essential to retain the employee. The agency must also determine that the employee or a significant number of employees in the targeted category would be likely to leave the Federal Government (for any reason, including retirement) in the absence of a retention bonus. Retention bonuses must be paid in accordance with the agency's retention bonus plan and must be reviewed and certified annually. Retention bonuses are subject to the limit on aggregate compensation established by 5 U.S.C. 5307 and 5 CFR part 530, subpart B.



Additional information on retention bonuses may be found at:  
<http://www.opm.gov/oca/pay/HTML/RETALLFS.HTM>.

Additional information on retention bonuses for groups of employees may be found at:

<http://www.opm.gov/oca/pay/HTML/GRPALLFS.HTM>.  
(5 U.S.C. 5754; 5 CFR part 575, subpart C)

### **Superior Qualifications and Special Qualifications Appointments**

Federal agencies have the authority to set pay for new appointments or reappointments of individuals to General Schedule positions above step 1 of the grade based on superior qualifications of the candidate or a special need of the agency. Under the Federal Wage System, special qualification appointments allow an employing agency to set pay at a rate above step 1 of the appropriate grade level for candidates with highly specialized skills in an occupation. Agencies must have documentation and recordkeeping procedures on making superior qualifications or special qualifications appointments in place in order to make such appointments. (5 U.S.C. 5333; 5 CFR 531.203(b) for General Schedule employees. See 5 U.S.C. 5341 and 5 CFR 532.403 for the Federal Wage System.)

## Compensation Flexibilities (continued)

### Highest Previous Rate

Upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, agencies may set the rate of basic pay of an employee by taking into account a rate of basic pay previously received by the individual while employed in another civilian Federal position (with certain exceptions). This rate may not exceed the maximum rate of the employee's grade. (5 U.S.C. 5334(a); 5 CFR 531.202 (definition of "highest previous rate") and 531.203(c) and (d) for General Schedule employees. See 5 U.S.C. 5343 and 5 CFR 532.405 for the Federal Wage System.)

### Waiver of Dual Pay Limitation

Agencies have authority to waive the limitation (40 hours per week) on aggregate basic pay, when "required services cannot be readily obtained otherwise" and "under emergency conditions relating to health, safety, protection of life or property, or national emergency." This authority enables an agency to employ a full-time Federal employee in a second job or to schedule a part-time agency employee with multiple part-time appointments to work more than an aggregate of 40 hours during a week. The agency pays overtime ONLY when an individual works more than 8 hours per day or 40 hours per week for the SAME agency. (5 U.S.C. 5533; 5 CFR part 550, subpart E)

### Compensatory Time Off for Travel

Under section 203 of the Federal Workforce Flexibility Act of 2004, a new form of compensatory time off for time spent in a travel status, when such time is not otherwise compensable, is available to employees. Agencies may establish procedures for requesting credit for compensatory time off for travel.



Additional information about this authority may be found at:

<http://www.opm.gov/oca/compmemo/2005/2005-03.asp>

## Compensation Flexibilities (continued)

### **Travel and Transportation Expenses for Interviews and/or New Appointments**

An agency, at its discretion, may pay the travel or transportation expenses of any individual candidate for a pre-employment interview or pay travel and transportation expenses for a new appointee to the first post of duty. For either payment, a decision made for one vacancy does not require a like decision for any similar future vacancies. Before authorizing any payments, the agency must consider factors such as availability of funds, desirability of conducting interviews, and feasibility of offering a recruiting incentive. (5 U.S.C. 5706b; 5 CFR part 572)

### **Advanced Payments for New Appointees**

Agencies may advance a new hire up to two paychecks so a new employee can meet living and other expenses. (5 U.S.C. 5524a; 5 CFR part 550, subpart B)

### **Federal Student Loan Repayments**

Agencies may set up programs to repay the student loans of Federal employees in order to attract or keep highly qualified individuals. Under the authority at 5 U.S.C. 5379, agencies may set up their own loan repayment program and repay Federally-insured student loans as a recruitment or retention incentive for candidates or current employees. Payments to an individual may not exceed \$10,000 per year or \$60,000 total. In order to receive student loan repayment benefits, an employee must sign a service agreement to remain in the service of the agency for a period of not less than 3 years. Individuals interested in student loan repayment opportunities must contact agencies directly. (5 CFR part 537)

## Compensation Flexibilities (continued)

### Premium Pay, Exceptions to the Biweekly Limitation

The head of an agency (or designee) may make an exception to the GS-15, step 10, biweekly limitation on premium pay during emergencies involving a direct threat to life or property. If the head of an agency determines such an emergency exists, the premium pay paid to an employee performing work in connection with that emergency, when added to the employee's rate of basic pay (including any locality payment or special salary rate), must not cause his or her total pay to exceed the rate for GS-15, step 10 (including any locality payment or special salary rate), on an annual basis. (Note: A different limitation applies to law enforcement officers. This limitation does not apply to overtime pay earned under the Fair Labor Standards Act. This limitation does not apply to the Federal Wage System.) (5 U.S.C. 5547(b); 5 CFR 550.106)

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### COMPENSATION AUTHORITIES AVAILABLE WITH OPM AND/OR OMB APPROVAL

The following compensation flexibilities require the approval of OPM and/or OMB:

- Special rates
- Group retention allowances in excess of 10 percent
- Critical pay authority
- Physicians' comparability allowance
- Title 38 flexibilities for health care employees
- Federal wage system authorities.

### Special Rates

OPM may establish higher rates of basic pay for an occupation or group of occupations nationwide or in a local area based on a finding that the Government's recruitment or retention efforts are, or would likely become, significantly handicapped without those higher rates. The minimum rate of a special rate range may exceed the maximum rate of the corresponding grade by as much as 30 percent. However, no special rate may exceed the rate for Executive Level V. A special rate request must be submitted to OPM by department headquarters and must be coordinated with other Federal agencies with employees in the same occupational group and geographic area. Additional information

## Compensation Flexibilities (continued)



Additional information on how to request a special rate may be found at:

<http://www.opm.gov/oca/COMPMEMO/2000/ssrpage.htm>.

(5 U.S.C. 5305; 5 CFR part 530, subpart C)

### **Group Retention Allowances in Excess of 10 Percent**

Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent (but not to exceed 25 percent) of an employee's rate of basic pay for a group or category of employees. The agency must determine that the unusually high or unique qualifications of the employees or a special need of the agency for the employees' services makes it essential to retain the employees. The agency must also determine that a significant number of employees in the targeted category would be likely to leave the Federal Government (for any reason, including retirement) in the absence of a retention allowance.

Retention allowances must be paid in accordance with the agency's previously established retention allowance plan and must be reviewed and certified annually. Retention allowances are subject to the limit on aggregate compensation established by 5 U.S.C. 5307 and 5 CFR part 530, subpart B.



Additional information on retention allowances for groups of employees may be found at:

<http://www.opm.gov/oca/pay/HTML/GRPALLFS.HTM>.

(5 U.S.C. 5754; 5 CFR part 575, subpart C)

### **Critical Pay Authority**

Section 102 of the Federal Workforce Flexibility Act of 2004 shifts primary responsibility for the Federal Government's critical pay authority from OMB to OPM. This shift was made to facilitate increased application of this underutilized flexibility as a means of attracting talented individuals to critical positions in the Federal Government who would not otherwise accept or stay in Government jobs at lower rates of pay. This provision became effective on October 30, 2004.

## Compensation Flexibilities (continued)

### **Critical Pay**

#### **Authority** (continued)

Under the critical pay authority, OPM may, upon the request of an agency head, and after consultation with OMB, grant authority to fix the rate of basic pay for one or more critical positions in an agency at not less than the rate that would otherwise be payable for that position, up to the rate for level I of the Executive Schedule (\$175,700 in 2004). Under this same provision of law, a higher rate of pay may be established upon the President's written approval. In order to apply the critical pay authority, the position must require a very high level of expertise in a scientific, technical, professional, or administrative field and be crucial to the accomplishment of an agency's mission. Until regulations or other guidance is provided, agencies wishing to use the critical pay authority should continue to use the criteria provided by OMB Bulletin 91-09, "Critical Pay Position Authority," dated March 7, 1991. However, all requests must be submitted to OPM, and OPM, in consultation with OMB, will make the determination to approve such a request.

### **Physicians' Comparability Allowance**

Agencies may pay physicians' comparability allowances (PCAs) to recruit and retain highly qualified Government physicians. In return, the physician must sign a service agreement with the agency. The head of an agency determines the size of the PCA, which may not exceed \$14,000 per annum for a physician who has served as a Government physician for 24 months or less or \$30,000 per annum for a physician who has served as a Government physician for more than 24 months. An agency plan for implementing the PCA program must be approved by OMB before an agency may pay a PCA to a physician. Public Law 106-571, December 28, 2000, permanently extended the authority to pay physicians' comparability allowances. The act also makes physicians' comparability allowances basic pay for retirement purposes if certain criteria are met. (This allowance does not apply to Federal Wage System employees.) (5 U.S.C. 5948; 5 CFR part 595)



## Compensation Flexibilities (continued)

<b>Title 38 Flexibilities for Health Care Employees</b>	Upon the request of the head of an agency, OPM may delegate the discretionary use of certain Department of Veterans Affairs' personnel authorities under chapter 74 of title 38, United States Code, to help recruit and retain employees in health care occupations. OPM has entered into title 38 delegation agreements with the Department of Defense, Health and Human Services, Justice, and Veterans Affairs for employees covered under chapter 51 of title 5, United States Code, (excluding members of the Senior Executive Service) performing direct patient care services or services incident to direct patient care. Under these delegation agreements, agencies may establish and use certain title 38 authorities such as the special salary rate, premium pay, qualifications-based grading system, and physician and dentist special pay authorities. (5 U.S.C. 5371)
<b>Federal Wage System Authorities</b>	There are four Federal Wage System Authorities. The following information addresses each of these. <ul style="list-style-type: none"><li data-bbox="511 1008 1443 1512">• <i>Special Rates.</i> The special rate authority allows a lead agency, with the approval of OPM, to establish rates above the regular Federal Wage System wage schedule rates for an occupation or group of occupations experiencing or potentially experiencing recruitment or retention difficulties.<p>Special rates are established by occupation, grade, agency, and/or geographic location. These rates will be paid by all agencies having positions for which the rates are authorized. The special rate payable may not, at any time, be less than the unrestricted rate otherwise payable for such positions under the applicable regular wage schedule. (5 U.S.C. 5341; 5 CFR 532.251)</p></li><li data-bbox="511 1543 1443 1852">• <i>Increased Minimum Hiring Rate.</i> The increased minimum hiring rate authority allows a lead agency to establish any Federal Wage System scheduled rate above step 1 as the minimum rate at which a new employee can be hired. When there is an increased minimum rate authorization for an occupation and grade at a particular location, all appointments must be made at the authorized increased minimum rate. (5 U.S.C. 5341; 5 CFR 532.249)</li></ul>

## Compensation Flexibilities (continued)

### Federal Wage System Authorities (continued)

- *Special Schedules.* The special schedule authority allows a lead agency, with the approval of OPM, to establish a Federal Wage System schedule of rates broader in scope than would normally be authorized under the special rates program. Special schedules are established for specific occupations within a geographic area. (5 U.S.C. 5341; 5 CFR 532.254)
- *Unrestricted Rate Authority.* Upon the request of an agency, OPM may approve exceptions to a statutory limitation on Federal Wage System pay adjustments for an occupation or group of occupations in a wage area or part of a wage area. The lead agency for the wage area must coordinate an employing agency's request for this exception with other agencies, as necessary, and submit a consolidated request to OPM. The consolidated request must include any available supporting wage survey data and a formal recommendation by the lead agency to approve or disapprove the request. (Requires specific authority in the pay limitation legislation; 5 CFR 532.801)

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### PREMIUM PAY AND ALLOWANCES

The following premium pay and allowances are addressed on the following pages:

- Night pay
- Night shift differential
- Sunday premium pay
- Holiday premium pay
- Types of annual premium pay
- Hazardous duty pay
- Environmental differential pay
- Pay for Federal firefighters
- Cost-of-living allowance and/or post differential in a nonforeign area
- Other payments and allowances.

## Compensation Flexibilities (continued)

### **Night Pay**

Generally, General Schedule employees regularly scheduled to work between the hours of 6 p.m. and 6 a.m. are entitled to night pay. Employees receive night pay for work performed during these hours (including paid holidays) and for periods of paid leave when the total amount of leave taken is less than 8 hours during the pay period. Premium pay for night work equals 10 percent of the employee's rate of basic pay. (5 U.S.C. 5545(a); 5 CFR 550.121)

### **Night Shift Differential**

A prevailing rate employee is entitled to pay at his or her scheduled rate plus a differential of 7½ percent of the scheduled rate for regularly scheduled nonovertime work when the majority of the employee's work hours occur between 3 p.m. and midnight. Employees are entitled to a differential of 10 percent of the employee's scheduled rate if the majority of the employee's work hours occur between 11 p.m. and 8 a.m. Night shift differential is paid for the entire shift when the majority of hours fall within the specified periods. (5 U.S.C. 5343; 5 CFR 532.505)

### **Sunday Premium Pay**

A full-time employee who performs up to 8 hours of regularly scheduled nonovertime work during a tour of duty, any part of which occurs on Sunday, is entitled to premium pay for the entire tour of duty equal to 25 percent of the employee's rate of basic pay. Sunday premium pay is not paid when Sunday work is not actually performed, including during leave hours. Part-time employees are not entitled to Sunday premium pay. Employees on compressed work schedules are paid for the number of regularly scheduled nonovertime hours worked in a tour of duty that begins or ends on a Sunday. (5 U.S.C. 5546(a) and (c); 5 CFR 550.171)

### **Holiday Premium Pay**

Most Federal employees who perform nonovertime work on a holiday are entitled to pay at their rate of basic pay plus premium pay at a rate equal to their rate of basic pay for holiday work not in excess of 8 hours (or the number of nonovertime hours under a compressed work schedule on the holiday). Employees who are assigned to duty on a holiday are entitled to pay for at least 2 hours of holiday work.

## Compensation Flexibilities (continued)



Additional information on holidays can be found at:

<http://www.opm.gov/oca/worksch/HTML/HOLIDAY.HTM>.

(5 U.S.C. 5546(b), 6103, 6104, 6124, and 6128(d); 5 CFR 550.103, 550.131 and 132, 610.201 and 202, and 610.405-407)

### **Types of Annual Premium Pay**

An agency may pay premium pay on an annual basis to employees in positions that involve substantial amounts of overtime work. Annual premium pay cannot exceed 25 percent of basic pay.

- *Standby Duty Pay.* May be paid to employees who remain at their duty station in a standby status for hours beyond 40 per week on a regular basis. (5 U.S.C. 5545(c)(1); 5 CFR 550.141-144, 161-163)
- *Administratively Uncontrollable Overtime Pay.* May be paid to employees whose hours of duty cannot be controlled administratively and which require substantial amounts of irregular or occasional overtime work. (5 U.S.C. 5545(c)(2); 5 CFR 550.151-154, 161-164)
- *Availability Pay for Law Enforcement Officers.* Paid to criminal investigators who are required to work, or be available to work, substantial amounts of "unscheduled duty." (5 U.S.C. 5542(d) and 5545(a); 5 CFR 550.181-187)

### **Hazardous Duty Pay**

General Schedule employees may receive additional pay for the performance of hazardous duty or duty involving physical hardship. (5 U.S.C. 5545(d); 5 CFR part 550, subpart I)

### **Environmental Differential Pay**

Prevailing rate (wage) employees may receive an environmental differential when exposed to a working condition, physical hardship, or hazard of an unusually severe nature. (5 U.S.C. 5343; 5 CFR 532.511)

## Compensation Flexibilities (continued)

### **Pay for Federal Firefighters**

Most Federal firefighters are subject to special pay computation rules that take into account their unusual work schedules. These rules deal with both basic pay and premium pay. (5 U.S.C. 5545(b) and 5542(f); 5 CFR 550.1301-1308)

### **Cost-of-living Allowance and/or Post Differential in a Nonforeign Area**

White-collar civilian employees receive a cost-of-living allowance when stationed in certain areas outside the continental United States (i.e., Alaska, Hawaii, Guam, and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands). The allowance is based on living costs substantially higher than the District of Columbia. Some employees in certain nonforeign areas receive a post differential based on environmental conditions that differ substantially from those in the continental United States and which warrant the differential as a recruitment incentive. The post differential is available only to employees recruited from outside the differential area. The maximum amount of the allowance or differential, or their combined total, cannot exceed 25 percent of the hourly rate of basic pay. (5 U.S.C. 5941; 5 CFR part 591, subpart B)

### **Other Payments and Allowances**

When legal and regulatory requirements are met, General Schedule and other specified categories of employees may receive allowances for working in remote worksites or for the expense of a uniform. In addition, civilian employees may receive advance payments and evacuation payments in the event of an agency order to evacuate a nonforeign area due to natural disasters or other reasons that create imminent danger to the lives of the employees and their family members. (5 U.S.C. 5942, 5 CFR part 591, subpart C (Remote Worksite Allowance); 5 U.S.C. 5901-5903, 5 CFR part 591, subpart A (Uniform Allowance); and 5 U.S.C. 5522-5524; 5 CFR part 550, subpart D (Evacuation Payments))