

## Frequently Asked Questions

### Grade and Pay Retention - 5 CFR 536

Permanent General Schedule (GS/GM/GW) and/or Federal Wage System  
(WG/WL/WS)

#### What is grade retention?

Grade and pay retention is an entitlement to protect employees who are demoted because of reasons other than their conduct or work performance. For two years, these employees keep the grade and pay of the position from which they were demoted.

#### What happens if I am changed to a lower grade?

You retain your grade if you are placed in a lower-graded position. This is referred to as "Grade Retention". Your pay also continues as if your grade had not changed. You receive within grade increases and comparability increases as if you were still assigned to your previous, higher-graded position.

#### What must occur in order for me to retain my current grade?

Demotions or changes to lower graded positions that result from the following management initiated actions *entitle* you to grade and pay retention:

- A. Reduction-in-Force. Grade retention is mandatory if you are placed in or changed to a lower grade after receiving a formal RIF notice and you have completed 52 weeks of service at a higher grade under a pay system (i.e., GS, FWS) that provides grade and pay retention protection.
- B. Reclassification of position (*due to correction of classification error or implementation of a new classification standard*). Grade retention is mandatory if your position is down-graded and the position has been classified at the higher grade for 52 continuous weeks.
- C. Interim appointments under the Whistleblower Protection Act re-entitle employees who were previously entitled to grade or pay retention for the duration of their original period of entitlement.

Grade and pay retention protections *may be provided* to employees who are demoted or changed to lower graded positions as a result of the following management initiated actions:

**D. Reorganization or Reclassification.** When a reorganization or reclassification has been announced in writing, an agency has the option to offer grade and pay retention to employees who are being or might be reduced in grade *provided* that these employees have completed 52 weeks of service at the higher grade.

### **How long will I retain the higher grade and pay?**

Grade retention begins on the effective date of the change to lower grade and lasts for two years. During this two-year period, employees continue to receive locality pay, within grade increases, 100% of comparability increases, and consideration for other Federal positions based on the retained grade.

However, any of the following conditions will result in termination of grade retention:

- The two-year anniversary of the retained grade period;
- A break in service of one work day or more;
- Demotion for personal causes or at the employee's own request;
- Permanent placement in a grade equal to or above the retained grade;
- A request from the employee in writing for grade retention termination;
- If the employee declines a reasonable offer for a position at or above the retained grade; or
- Failure to enroll in or comply with an HHS placement program.

### **Will I have promotion opportunities while retaining my grade?**

If your retained grade and pay entitlement is a result of a mandatory reason as described above, you have priority entitlement to be re-promoted to equivalent positions at the same grade (and to intervening grades between the lower grade and the retained grade) without being required to apply for those positions.

If you apply for promotion to other positions or if the retained grade and pay entitlement is a result of a discretionary decision and you apply for promotion, your qualifications will be evaluated:

- On the basis of your retained grade and series, or
- On the basis of the actual position you currently occupy, whichever is most beneficial to you.

### **If I accept a position in another agency, will my grade and pay retention continue?**

An employee who moves to a position outside the NIH, is entitled to grade and pay retention that was provided to that employee while he/she was employed at the NIH. An employee on retained grade and pay who is transferred or reassigned from outside the NIH to a position within the NIH is entitled to continue that grade and pay retention.

However, at the time of selection the selecting official may ask such retained grade and pay employees to *waive* their retained grade entitlement in order to be placed at a lower grade within the NIH than their retained grade of a position outside the NIH. An employee who *waives grade retention* is *not entitled to pay retention*, but pay retention may be extended at the discretion of management.

### **When grade retention ends, what will happen to my pay?**

When grade retention ends, your pay will still be protected. Your basic annual rate of pay (without locality pay) will be compared to the rates of pay for each step within the lower-graded position to which you are now appointed.

- If your basic annual rate of pay is equal to the rate for one of those steps, your pay will be set at that step and your entitlement to pay retention ends.
- If your basic annual rate of pay falls between the rates of two of those steps, your pay will be set at the higher step and your entitlement to pay retention ends.
- If your basic annual rate of pay exceeds the rate for step 10 but is equal to/less than 150% of the rate for Step 10 (Step 5 for FWS), you retain that rate of pay; and,
  - You continue to receive 50% of the annual comparability increases to the Step 10 (Step 5 for FWS) rate of pay for the grade of the lower graded position to which you are now assigned;
  - You are no longer eligible for within grade increases, since your rate of pay exceeds the pay range for the grade to which you are now assigned;
  - 100% of the locality pay for the pay region in which your duty station is located will be added to your basic retained rate of pay.

### **When is pay retention mandatory?**

Pay retention **must** be granted to you if your pay would otherwise be reduced for one of the following reasons:

- A. The end of the two-year grade retention period;
- B. Reduction-in-force or reclassification of position if you do not meet grade retention requirements (e.g. less than 52 weeks in a higher classified grade);

- C. Reduction/elimination of special pay rates;
- D. Placement from a special rate position to a non-special or lower special rate position;
- E. Placement in a different pay schedule; or
- F. Placement in a formal employee development program (e.g. Upward Mobility, Intern, COTA, Apprenticeship).

### **Can pay retention be granted at management's discretion under other circumstance?**

Yes, under certain circumstances pay retention may be granted if it is in the best interest of the Government to do so. For example (not intended to be all inclusive):

- A. Transfer of Function. Employees who decline transfer of function to a different commuting area and who are placed in a lower graded position in the original commuting area in lieu of separation by adverse action procedures may be granted pay retention (536.103(b) and 351 Subpart C).
- B. Disability. Pay retention may be granted to employees who are found to be disabled for their current position yet are willing to accept assignment to a lower graded position, the duties of which they are capable of performing. The finding of disability must be supported by acceptable medical evidence. This policy is applicable regardless of whether an application for disability retirement has been filed or the disability retirement application has been denied. Grade retention may not be authorized for such purposes. (536.104(6)(b)).
- C. Other. Pay retention may be granted to employees whose rate of pay would otherwise be reduced as a result of management action. This includes employees who would otherwise cause another employee to be reduced in grade (536.104(b)).

### **How long will pay retention last?**

Your pay retention will cease to apply if any of the following events occur:

- A. You have a break in service of one day or more;
- B. You are demoted for personal cause or at your own request;
- C. You become entitled to pay equal to or greater than the retained pay; or
- D. You decline a reasonable offer to a position with pay equal to or greater than the retained rate.

### **How is pay set when a retained grade and pay employee receives a temporary promotion?**

Since the grade of the temporary promotion is greater than the retained grade, pay is set for the temporary promotion by adding two steps above the current annual rate of basic pay, matching that amount within the higher grade range.

If the grade is to an intervening grade between the permanent lower graded position and the retained grade, the employee receives a position change and pay is not affected.

### **How is pay set when the temporary promotion of a retained grade and pay employee ends?**

If the period of temporary promotion extended for one year or longer, or if the two-year period of grade retention ended during the temporary promotion period; pay is set under the maximum payable rate rules (if the rate will fall within the pay range) *or* pay is set under pay retention after adjusting to reflect any pay adjustments, within-grade increases, or increases due under the retained grade. Add the locality rate to this basic annual rate of pay.

If the period of temporary promotion is one year or less and grade retention has not expired, pay is set within the retained grade to reflect any pay adjustments, or within-grade increases due during the period of the temporary promotion. Locality pay is paid in addition to the retained rate of basic pay.

### **How is pay set when a retained pay employee receives a temporary promotion?**

Pay is set at the higher of:

- the retained rate of pay; or,
- the equivalent of two steps above step 10 of the lower grade.

### **What happens if an employee on grade or pay retention is moved to a different pay schedule or pay system?**

The employee is entitled to retain the grade of the position with the *higher representative rate* (i.e., GS-Step 4, FWS-Step 2, Single band system - the pay of the employee).

### **May an employee appeal grade and pay retention actions?**

Yes, employees may appeal no earlier than the effective date or no later than 30 calendar days after receiving the Notice of Action (SG-50B). NIH employees may appeal to the HR Bethesda Center, Classification Appeals Office or directly to the U. S. Office of Personnel Management.

For additional information, please contact your Client Services Division Team on 496-1443.