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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 534

RIN: 3206-AJ47

### Basic Pay for Employees of Temporary Organizations

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing interim regulations on setting pay for employees of temporary organizations established by law or Executive order. These regulations will enable agencies to determine the rate of basic pay and locality payments for employees of temporary organizations.

**DATES:** Effective Date: The regulations are effective on January 25, 2002.

*Applicability Dates:* The regulations apply on the first day of the first applicable pay period beginning on or after January 25, 2002.

*Comments Date:* Comments must be received on or before March 26, 2002.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or email: [payleave@opm.gov](mailto:payleave@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Ron Genua, (202) 606-2858.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing interim regulations on compensation for employees of temporary organizations established by law or Executive order. Section 1101 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001

(Public Law 106-398, October 30, 2000), adds a new subchapter IV to chapter 31 of title 5, United States Code. Subchapter IV provides that the head of a temporary organization may make excepted service appointments of up to 3 years to fill positions of the temporary organization. The appointments may be extended for an additional 2 years consistent with regulations published by OPM. This authority is available to executive and legislative branch agencies. In addition, subchapter IV provides that, upon request by the head of a temporary organization, the head of any department or agency of the Government may detail employees on a nonreimbursable basis to the temporary organization to assist the temporary organization in carrying out its duties.

Subchapter IV defines a temporary organization as a commission, committee, board, or other organization that is established for a specific period of time, not in excess of 3 years, for the purpose of performing a specific study or other project. Such a temporary organization generally terminates upon completion of the study or project.

Subchapter IV provides OPM with authority to establish regulations to determine the rate of basic pay for employees of temporary organizations without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. (See 5 U.S.C. 3161(d).) These interim regulations do not apply to temporary organizations established prior to October 30, 2000.

Subchapter IV also provides that the rate of basic pay for the chairman, a member, an executive director, a staff director, or other executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service (SES) under section 5382 of title 5, United States Code. The rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for GS-15. However, the rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the agency to be exceptional, exceed the maximum rate of basic pay for GS-15, but may not exceed the maximum rate of basic pay for the SES. Subchapter IV defines *basic pay* as including locality pay provided

under section 5304 of title 5, United States Code.

In setting rates of basic pay for staff and other non-executive level positions, the interim regulations require that the head of a temporary organization give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. This is consistent with a parallel requirement established under regulations published by the General Services Administration for setting basic pay for advisory committee members and staff under the Federal Advisory Committee Act. (See 41 CFR 101-6.1033.) The interim regulations also require the head of a temporary organization to take into account rates of basic pay paid to Federal employees who have duties that are similar in terms of difficulty and responsibility.

The interim regulations provide General Schedule locality payments to all executive level and staff positions of temporary organizations. The regulations set maximum rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. This will make it easier to determine pay when employees move from General Schedule positions to positions in temporary organizations, and vice versa.

The compensation authority in 5 U.S.C. 3161(d) is limited to determining rates of basic pay and locality-adjusted rates of pay for employees of temporary organizations. In addition, subchapter IV provides that an employee of a temporary organization is entitled to the same benefits provided to temporary employees under title 5, United States Code. The interim regulations clarify, however, that subchapter IV provides no new independent authority for the head of a temporary organization to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific authority. For example, the law does not create any new authority for providing premium pay, bonuses, awards, leave, or benefits differently than under title 5 or any other already existing statute.

The interim regulations require that the head of a temporary organization comply with section 5504 of title 5, United States Code, including the requirement for biweekly pay periods and requirements for converting an annual rate of basic pay to a basic

hourly, daily, weekly, or biweekly rate. The regulations also require that employees of temporary organizations receive basic pay on an hourly basis. These requirements will facilitate compliance with the laws and regulations on crediting and using leave on an hourly basis, or fractions thereof.

Finally, subchapter IV provides criteria under which the head of a temporary organization may accept volunteer services without regard to section 1342 of title 31, United States Code.

#### **Waiver of Notice of Proposed Rulemaking and Delay in Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the interim regulations are being published to implement changes in law that are already in effect.

#### **E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### **Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### **List of Subjects in 5 CFR Part 534**

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

Accordingly, OPM is amending part 534 of title 5 of the Code of Federal Regulations as follows:

#### **PART 534—PAY UNDER OTHER SYSTEMS**

1. The authority citation for part 534 is revised to read as follows:

**Authority:** 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

2. Subpart C of part 534 is added to read as follows:

#### **Subpart C—Basic Pay for Employees of Temporary Organizations**

- 534.301 General.
- 534.302 Applicability.
- 534.303 Basic pay for executive level positions.
- 534.304 Basic pay for staff positions.

534.305 Pay periods and computation of pay.

#### **Subpart C—Basic Pay for Employees of Temporary Organizations**

##### **§ 534.301 Coverage.**

This subpart provides rules for setting rates of basic pay for employees who are appointed to positions in temporary organizations in accordance with subchapter IV of chapter 31 of title 5, United States Code (5 U.S.C. 3161). Such temporary organizations are established by law or Executive order. Employees appointed under 5 U.S.C. 3161(b) are not subject to the provisions applicable to General Schedule employees covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

##### **§ 534.302 Applicability.**

The regulations in this subpart are applicable to employees of temporary organizations who are appointed and compensated under 5 U.S.C. 3161. The rates of basic pay for employees appointed under 5 U.S.C. 3161(b) must be established under the regulations in this subpart. This subpart provides rules for determining rates of basic pay and locality-adjusted rates of basic pay. This subpart does not provide authority to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific statutory authority.

##### **§ 534.303 Basic pay for executive level positions.**

(a) Rates of basic pay for executive level positions of temporary organizations may not exceed the maximum rate of basic pay established for the Senior Executive Service under 5 U.S.C. 5382. Therefore, the highest rate of basic pay for executive level positions of temporary organizations, not including any applicable locality-based comparability payment under 5 U.S.C. 5304, may not exceed the rate of basic pay for level IV of the Executive Schedule.

(b) Employees in executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay for executive level positions may not exceed the rate of basic pay for level III of the Executive Schedule.

##### **§ 534.304 Basic pay for staff positions.**

(a)(1) Rates of basic pay for staff or other non-executive level positions of temporary organizations may not exceed the maximum rate of basic pay for grade GS-15 of the General Schedule under 5

U.S.C. 5332, excluding any locality-based comparability payment under 5 U.S.C. 5304.

(2) In establishing rates of basic pay for staff and other non-executive level positions of temporary organizations, the head of a temporary organization must give consideration to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. The head of a temporary organization must also take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility.

(b) Employees in staff and other non-executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay may not exceed the locality-adjusted rate of basic pay for grade GS-15 of the General Schedule under 5 U.S.C. 5304, for the locality pay area involved.

(c) Notwithstanding the limitations in paragraphs (a) and (b) of this section, the rate of basic pay and locality-adjusted rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of a temporary organization to be exceptional, exceed the maximum rates established under those paragraphs. However, the higher payable rates may not exceed the applicable maximum rate of basic pay or locality-adjusted rate of basic pay authorized under this subpart for an executive level position.

##### **§ 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.

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