

(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.

[56 FR 12835, Mar. 28, 1991, as amended at 57 FR 3114, Jan. 28, 1992; 58 FR 50249, Sept. 27, 1993; 61 FR 3540, Feb. 1, 1996; 64 FR 69172, Dec. 10, 1999]

§ 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

§ 530.204

5 CFR Ch. I (1-1-01 Edition)

to the estimated aggregate compensation the employee is projected to receive, 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 been deferred and would have been pay-

able at the beginning of the next calendar year, the debt will be extinguished on January 1 of the next calendar year. As part of the correction of the error, the excess amount will be deemed to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment as described in § 530.204 and must be considered part of the employee's aggregate compensation for the new calendar year.

[56 FR 12835, Mar. 28, 1991, as amended at 57 FR 3114, Jan. 28, 1992; 58 FR 50249, Sept. 27, 1993; 64 FR 69172, Dec. 10, 1999]

§ 530.204 Payment of excess amounts.

(a) Except as provided in paragraph (d) of this section, amounts in excess of the limitations described in or established by § 530.203 shall be paid to the employee in a lump-sum at the beginning of the following calendar year. The amount so paid shall be considered part of the employee's aggregate compensation for the new calendar year.

(b) If a lump-sum payment provided for in paragraph (a) of this section causes an employee's estimated aggregate compensation to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year, the agency shall consider only the employee's basic pay in determining the extent to which the lump-sum payment may be paid and shall defer all other payments, as provided in § 530.203, in order to pay as much of the excess amount as possible. Any payments deferred under this paragraph, including any portion of the excess amount that was not payable, shall become payable at the beginning of the next calendar year, as provided in paragraph (a) of this section.

(c) If an employee transfers to another agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the individual when the excess amount was created.

(d) The following conditions permit payment of excess aggregate compensation without regard to the calendar year limitation:

(1) If an employee dies, the excess amount is payable immediately as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.