

**§ 536.104**

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

pay schedule at a grade(s) higher than the position in which the employee is placed, including service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who is moved to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

(2) An employee is eligible for grade retention when his or her position has been reclassified at a lower grade only if the position which is being reduced had been classified at a higher grade(s) for a continuous period of at least 1 year immediately before the reduction.

(3) In situations other than those covered in paragraphs (c)(1) and (c)(2) of this section, an employee is eligible for grade retention if he or she, immediately prior to being placed in the lower grade, has served in a position in any pay schedule for 52 consecutive weeks or more, provided the service was in an agency as defined in 5 U.S.C. 5102 at a grade(s) higher than the position in which the employee is placed, including service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who is moved to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

[45 FR 85656, Dec. 30, 1980, as amended at 57 FR 12404, Apr. 10, 1992]

**§ 536.104 Coverage and applicability of pay retention.**

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced:

(1) As the result of the expiration of the 2-year period of grade retention; or

(2) As a result of reduction-in-force or reclassification when the employee does not meet the eligibility requirement for grade retention; or

(3) As a result of a reduction or elimination of scheduled rates, special schedules, or special rates, but not as a result of—

(i) A statutory reduction in scheduled rates of pay under the General Schedule, including a reduction authorized under section 5305(c) of title 5, United States Code; or

(ii) A statutory reduction in a prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, and part 532 of this chapter.

(4) As a result of the placement of an employee into a non-special rate position or into a lower special rate position from a special rate position; or

(5) As a result of the placement of an employee in a position in a lower wage area or in a position in a different pay schedule; or

(6) As a result of the placement of the employee in a formal employee development program generally utilized Governmentwide: Upward Mobility, Apprenticeship, and Career Intern Programs.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may provide pay retention to eligible employees whose rates of basic pay would otherwise be reduced as the result of a management action.

(c) The head of the agency may grant pay retention to an employee whose pay is reduced as the result of the movement of his or her position from a nonappropriated fund instrumentality under the jurisdiction of the Department of Defense or the Coast Guard to the civil service employment system of the Department of Defense or the Coast Guard, respectively.

[45 FR 85656, Dec. 30, 1980, as amended at 51 FR 12684, Apr. 15, 1986; 53 FR 49545, Dec. 8, 1988; 54 FR 51009, Dec. 12, 1989; 57 FR 12404, Apr. 10, 1992]

**§ 536.105 Exclusions.**

(a) Grade and pay retention shall not apply to an employee who—

(1) Moves from a position that is not in an agency as defined in 5 U.S.C. 5102;

(2) Is identified under 5 U.S.C. 2105(c), except prevailing rate employees included under 5 U.S.C. 5361;

(3) Is reduced in grade or pay for personal cause or at the employee's request;

(4) Does not satisfactorily complete the probationary period prescribed by 5