



NASA DESK GUIDE

on

Pay-Setting

*Prepared by: Jim Tingwald
Workforce Management and Development Division
NASA Headquarters*

DG-# 14

Date Issued December 2006

TABLE OF CONTENTS

CHAPTER 1	Introduction and Overview
1- 1	Purpose
1- 2	Importance of Pay Setting
1-3	Legal and Regulatory Framework
1- 3- 1	Laws
1-3-2	Executive Orders
1-3-3	Regulations
1-3-4	Comptroller General Decisions
1-3-5	NASA Issuances
1- 4	Pay Setting Process
1- 5	Relation of Classification and Qualifications to Pay
1-6	Pay Systems
1-6- 1	Introduction
1-6- 2	General Schedule (GS)
1-6- 3	Federal Wage System (FWS)
1-6- 4	Senior Executive Service (SES)
1-6- 5	Scientific and Professional Positions (ST)
1-6- 6	Senior Level Positions (SL)
1-6- 7	NASA Excepted Positions (NEX, AD)
1-6- 8	Executive Schedule (EX)
1-7	General Pay Rules
CHAPTER 2	Pay Setting for Initial Appointments
2-1	Introduction
2-2	Authority
2-3	General Rule
2-4	Exceptions
2-5	Superior Qualifications Appointments
2-5-1	Purpose
2-5-2	Coverage
2-5-3	Eligibility
2-5-4	Requirement for Prior Approval
2-5-5	Exceptions to the 90-Day Rule
2-5-6	Criteria
2-5-7	Superior Qualifications
2-5-8	Matching Income
2-5-9	Special Need Criteria
2-5-10	Relation to Recruitment Bonuses
2-5-11	Documentation
2-6	Recruitment Bonuses
2-6-1	Purpose
2-6-2	Coverage

2-6-3	Authority
2-6-4	Requirement for Prior Approval
2-6-5	Service Agreements
2-6-6	Amount and Payment of Bonuses
2-6-7	Criteria
2-6-8	Documentation
2-7	Pay for Critical Positions

CHAPTER 3 Highest Previous Rate (HPR) and Maximum Payable Rate (MPR) Rules

3-1	Introduction
3-2	Authority
3-3	Basic Policy
3-4	Definition of Highest Previous Rate
3-5	Uses of HPR
3-6	Restrictions on Using HPR
3-7	Movements Involving Special Rates
3-7-1	Reassignments
3-7-2	Changes to Lower Grade
3-8	Using the HPR and MPR to Compute Salaries
3-8-1	Definition of Maximum Payable Rate
3-8-2	Computing the MPR
3-8-4	Computing HPR Based on Merit Pay Rates

CHAPTER 4 Promotions

4-1	Introduction
4-2	Authority
4-3	Definition of Promotion
4-4	The Two-Step Rule
4-5	Geographic Conversion Rule
4-6	Standard Method
4-7	Alternate Method
4-8	Promotion of Employees on Retained Pay
4-9	Key Terms
4-10	Relation Between the MPR and the Promotion Rule
4-11	Windfalls
4-12	Promotion Examples
4-13	Promotion Between Pay Systems

CHAPTER 5 Locality Pay

5-1	Introduction
5-2	Authority
5-3	Background
5-4	Coverage
5-5	Locality Pay Caps
5-6	Locality Pay Areas

5-7	Movements Between Locality Pay Areas
5-8	Uses of Locality Pay
5-9	Pay Administration
5-10	Relation Between Locality Pay and Special Rates
5-11	Computing the Net Annual Increase
CHAPTER 6	Qualifications Pay
6-1	Purpose
6-2	Definitions
6-3	Criteria for Approval
6-4	Paysetting
6-5	Positions Covered
6-6	Positions Excluded
6-7	Actions Covered
6-8	Prohibited Use
6-9	Service Requirement
CHAPTER 7	Grade and Pay Retention
7-1	Introduction
7-2	Authority
7-3	Grade Retention
7-3-1	Employee Eligibility
7-3-2	Mandatory Uses of Grade Retention
7-3-3	Grade to Be Retained
7-3-4	Grade Retention Entitlements
7-3-5	Effect of Time Limited Promotions
7-3-6	Multiple Demotions
7-3-7	Termination of Grade Retention
7-3-8	Transfers to Other Agencies
7-4	Pay Retention
7-4-1	Employee Eligibility
7-4-2	Actions Covered
7-4-3	Setting the Pay Rate
7-4-4	Entitlements While on Pay Retention
7-4-5	Termination of Pay Retention
7-5	Grade and Pay Retention as Management Tools
7-5-1	Optional Uses of Grade Retention
7-5-2	Optional Uses of Pay Retention
CHAPTER 8	Movement Between Pay Systems
8-1	Introduction
8-2	Authority
8-3	The General Rule
8-4	Understanding Other Pay Systems
8-4-1	Authority
8-4-2	Structure of Pay systems

8-4-3	Determining Representative Rates
8-4-4	Understanding a System's Structure
8-4-5	Demonstration Projects
8-5	Setting the Pay
8-6	Promotions
8-7	Reduction in Force (RIF)
8-8	Documenting Movements Between Pay Systems
CHAPTER 9	Movement from GM to GS
9-1	Introduction
9-2	Authority
9-3	Background
9-4	Pay Setting for GM employees
9-4-1	General Rule
9-4-2	Within-Grade Increases (WIG's)
9-4-3	Annual Pay Raises
9-5	Movement from GM to GS
9-6	Pay Setting when Moving from GM to GS
CHAPTER 10	Law Enforcement Officers
10-1	Introduction
10-2	Authority
10-3	Definition of Law enforcement Officer for Pay Purposes
10-4	Special Rates Established Under Section 403 of FEPCA
10-5	Determining Pay Rates
10-6	Overtime Rates
10-7	Limits on Premium Pay
CHAPTER 11	Availability Pay
11-1	Introduction
11-2	Authority
11-3	Definition and Coverage
11-4	Computation of Availability Pay
11-5	Mandatory Nature of Availability Pay
11-6	Opting Out of Availability pay
11-7	Elimination of Availability Pay
11-8	Uses of Availability Pay
11-9	Relation of Availability Pay to Other Premium Pay
11-10	Relation to Fair Labor Standards Act
CHAPTER 12	Within Grade and Quality Step Increases
12-1	Introduction
12-2	Authority
12-3	Delegated Authority
12-4	Within Grade Increases
12-4-1	Summary

12-4-2	Employee Coverage
12-4-3	Acceptable Level of Competence Determination
12-4-4	Waiting Periods and Effective Dates
12-4-5	Creditable Service
12-4-6	Equivalent Increases
12-4-7	Denials of WIG's
12-5	Quality Step Increases (QSI's)
CHAPTER 13	Relocation Bonuses
13-1	Introduction
13-2	Authority
13-3	Coverage
13-4	Approval Authority
13-5	Requirement for Prior Approval
13-6	Service Agreements
13-7	Amount and Payment of Bonuses
13-8	Criteria
13-9	Documentation
CHAPTER 14	Retention Incentives
14-1	Introduction
14-2	Authority
14-3	Coverage
14-4	Approval Authority
14-5	Amount and Payment of Incentives
14-6	Criteria
14-6-1	Individual Incentives
14-6-2	Group Incentives
14-7	Adjustment or Termination of Retention Incentives
14-8	Review Requirement
14-9	Records
CHAPTER 15	Physicians' Comparability Allowance (PCA)
15-1	Introduction
15-2	Authority
15-3	PCA Plan
15-4	Purpose
15-5	Definition of Physician
15-6	Eligibility
15-7	Categories
15-8	Criteria
15-9	Maximum Amount of Allowance
15-10	Approval Authority
15-11	Agreements
15-12	Termination of Employment
15-13	Effect of Position Changes

15-14	Reduction in Force (RIF)
15-15	Payment of the PCA
15-16	Relation of PCA to Other Pay
15-17	Use of PCA in Retirement and TSP Computations
15-17-1	Basic Requirement
15-17-2	Disability and Survivor Annuities
15-17-3	Deductions
15-17-4	Thrift Savings Plan
15-18	Records
App. A	NASA Plan for Implementation of the Physicians' Comparability Program
App. B	Sample PCA Agreement
App. C	Sample Documentation Record

CHAPTER 16 Supervisory Differentials

16-1	Introduction
16-2	Authority
16-3	Eligibility
16-4	Comparing Pay Between the Supervisor and Subordinate
16-5	Requirement for Higher Level Approval
16-6	Computation and Payment of Supervisory Differential
16-7	Termination and Adjustment of Supervisory Differentials
16-8	Relation of Supervisory Differential to Basic Pay
16-9	Records

CHAPTER 17 Pay Caps

17-1	Introduction
17-2	Authority
17-3	Level V Cap for the General Schedule
17-4	Locality Pay Caps
17-5	Caps on Premium Pay
17-6	Level IV Cap for pay Set by Administrative Action
17-7	Level I Aggregate Pay Cap
17-7-1	Basic Requirement
17-7-2	Coverage
17-7-3	Exceptions
17-7-4	Estimating Annual Compensation
17-7-5	Deferral of Discretionary and Nondiscretionary Payments
17-7-6	Special Procedures for Retention Allowances
17-7-7	Payment of Deferred Compensation
17-7-8	27th Pay Day Problem

CHAPTER 18 Federal Wage System (FWS)

18-1	Introduction
18-2	Authority
18-3	Structure of the Federal Wage System

18-4	Special pay Schedules
18-5	Wage Areas and the Prevailing Rate
18-6	Steps and waiting Periods
18-7	Movements Between FWS positions
18-8	Movements Between Wage Areas
18-9	New Appointments
18-10	Highest Previous Rate Rule
18-11	Promotions
18-12	Retained Pay

CHAPTER 19 Correcting Pay Errors

19-1	Introduction
19-2	Authority
19-3	Variations to OPM Regulations
19-4	Waivers of Overpayments
19-5	Relation of Waivers to Debt Collection Procedures
19-6	De Facto Employment Rule
19-7	Corrections of Administrative Errors
19-8	Back Pay
19-8-1	Basic Entitlement
19-8-2	Unjustified or Unwarranted Personnel Actions
19-8-3	Requirement to Have Been Ready Willing and Able to Work
19-8-4	Authority to Award Back Pay
19-8-5	Time Limits for Back Pay
19-9	Settlement Agreements
19-10	Compensatory and Consequential Damages
19-11	Attorney's Fees
19-12	Computation of Back Pay
19-12-1	Gross Back Pay
19-12-2	Deductions from Back Pay
19-13	Restoration of Annual Leave
19-14	Computation of Interest
19-15	The Judgment Fund

CHAPTER 20 Severance Pay

20-1	Introduction
20-2	Authority
20-3	Employee Eligibility
20-4	Actions covered
20-5	Effect of Reasonable Offers on Entitlement to Severance Pay
20-6	Computing Severance Pay
20-7	Creditable Service
20-8	Pay Rate to Use
20-9	Time-Limited Appointments
20-10	Severance Pay Fund and Life Time Limits

20-11	Payment of Severance Pay
20-12	Suspension and Termination of Severance Pay upon Reemployment
20-13	Improper Uses of Severance Pay
20-14	Relation of Severance Pay to Buyouts
20-15	Records

CHAPTER 21 Redesignation Bonus

21-1	Introduction
21-2	General Requirements
21-3	Determining Basic Eligibility
21-4	Determining Bonus Level
21-5	Payments
21-6	Service Agreements
21-7	Bonus Repayment

Appendix I List of Acronyms

Chapter 1

INTRODUCTION AND OVERVIEW

1-1. Purpose

The purpose of this guide is to provide a comprehensive reference to assist users to set pay in NASA. The guide provides in depth coverage of many topics. However, users should also refer to applicable laws, regulations, and NASA issuances when making pay decisions. Advice is available from the Workforce Management and Development Division, Office of Human Capital Management.

NOTE: Unless otherwise stated, pay rates cited in this document are generally the 2006 rates. Current pay tables are located at <http://www.opm.gov/oca/>

1-2. Importance of Pay Setting

Pay setting is one of the most important functions of a personnel specialist. When done properly, it can help to motivate employees, but when done improperly, it can be a major cause of dissatisfaction. Correcting pay errors can be extremely time consuming and difficult.

Pay must be set in accordance with laws, regulations, and NASA issuances. In addition, it is important that laws and regulations be interpreted and applied in the manner that will provide the maximum benefit to our employees.

1-3. Legal and Regulatory Framework

1-3-1. Laws

The Federal pay system is based on laws passed by Congress. Most of these laws are codified in Title 5 of the United States Code (USC). Most of the pay laws are in chapters 53 to 59 of Title 5. NASA has some of its own pay authorities authorized in the Space Act and codified in Title 42. In this guide laws will be referred to with the title and section number. For example 5 USC 5301 refers to section 5301, which is the first section in chapter 53 of Title 5 of the United States Code. The NASA Flexibility Act of 2004 (P.L. 108-201) provides the Agency unique authority in some pay setting situations e.g., Qualifications Pay, Critical Pay, Recruitment, Relocation, Retention, and Redesignation bonuses.

1-3-2. Executive Orders

The President has wide authority to issue Executive Orders on many different subjects. These orders are numbered sequentially. Occasionally one of these orders will pertain to pay. For example, each year, the President issues an Executive Order that announces the following year's increases for the General Schedule (including locality pay) and other pay systems. Although they may not contradict laws, they have the force of law.

1-3-3. Regulations

The Office of Personnel Management (OPM) has been given the authority to issue regulations to implement the pay laws. These regulations are codified in Title 5 of the Code of Federal Regulations (CFR). Most of the pay regulations are contained in parts 530 to 595 of Title 5 of the CFR. In this guide, regulations will be referred to by their title, part, and section numbers. For example, 5 CFR 531.203 refers to section 203 of part 531 of Title 5 of the Code of Federal Regulations.

When OPM proposes new or revised regulations, the proposals are published in the Federal Register. Agencies and other interested parties have the opportunity to comment on the proposal before it is issued as a final regulation. Proposed regulations are not effective until published in the Federal Register as interim or final. Centers should submit comments to the Office of Human Capital Management for consolidation and submission to OPM. When OPM makes a final decision, the final regulation is published in the Federal Register. OPM may also issue interim regulations. These are issued in situations where there is a compelling need to make the regulation effective immediately. Even though the regulation is effective, agencies and other interested parties have the opportunity to comment before the regulation is made final.

1-3-4. Comptroller General Decisions

Prior to 1996, the Comptroller General (CG) was the final authority on Federal pay matters. The CG is the head of the General Accountability Office (GAO) which is an Agency in the legislative branch of the Federal government.

The CG rendered decisions on pay issues initiated by agencies or employees. These decisions interpreted laws and regulations, and agencies were and are still required to follow them until and unless they are overturned. These decisions were published in bound volumes each

year, and there were also "unpublished" decisions which were not contained in the volumes but which still had the same force as the published decisions. Published decisions are cited by the volume number and the page number. For example, 60 CG 801 would be found on page 801 of volume 60. All published and unpublished decisions can be cited by a number beginning with the letter B followed by 6 numbers. GAO also published the Civilian Personnel Law Manual covering compensation, leave, relocation, and travel. The manual contained discussions of a wide variety in these areas, and for each topic provided citations and summaries of pertinent CG decisions. These decisions are available through various legal research services such as Personnet, and many are available on GAO's web site, (<http://www.gao.gov>). Decisions can be located through other sites such as the Government Printing Office (www.gpo.gov).

In 1996, the authority to issue decisions on most pay matters was transferred to OPM. OPM publishes its decisions on its web site (<http://www.opm.gov/payclaims/index.asp>). Unless a CG decision has been overruled, it must still be used and may be cited as a proper authority.

In 1992, GAO issued decision B-222926.3, which stated that the CG would not decide matters covered by a negotiated grievance procedure. OPM has maintained this position (5 CFR 178.101(b)). Thus, if a bargaining unit employee raises a pay issue and is not satisfied with NASA's decision, he/she may not file a claim with OPM. Rather, he/she must file a grievance under the negotiated grievance procedure.

Centers wishing to obtain a formal ruling on a pay matter from OPM should contact the Office of Human Capital Management.

1-3-5. NASA Issuances

Agencies have the authority to issue policies, instructions, or procedures to supplement law or regulation, but they may not contradict the law or regulation. NASA's policies are published in NASA Procedural Requirements (NPR's), which have the force of regulations. If NASA has not issued a policy or procedure, Centers have discretion to develop their own policies and procedures, which must conform to laws and regulations.

Most of NASA's policies related to pay can be found in NPR 3530.1A. NASA Policy Directive (NPD) 3000 delegates authority for most pay actions to Center Directors and the Assistant Administrator for Infrastructure and Administration. With a few exceptions, generally

applying to the Senior Executive Service (SES), these officials are permitted to redelegate these authorities to other officials.

1-4. Pay Setting Process

As is the case with many Human Resources (HR) functions, the pay setting process involves exercising both personnel management and administration authorities. For this reason it is important that HR specialists work closely with managers to set pay equitably and correctly.

For example, it would be the manager who would decide whether he/she wanted to appoint someone above the minimum step of the grade and/or pay that individual a recruitment bonus, and it would be the HR specialist who would ensure that the requirements for exercising these authorities have been met. The HR specialist can also suggest alternatives if the flexibility which the manager wishes to use is not appropriate. Although the Federal pay system is governed by a wide variety of laws and regulations, much flexibility have been added to it during the last few years, and it is the personnel specialist's responsibility to help managers meet their needs by taking full advantage of all the existing options.

1-5. Relation of Classification and Qualifications to Pay

Most employees are in pay systems that are position-based. This means that basic pay is determined by the classification of the duties and responsibilities of the position to a particular grade or pay level regardless of the qualifications of the employee. The intent of this system is to ensure that there will be equal pay for equal work.

For example, once a General Schedule (GS) position is classified based on the duties assigned by management, the grade and therefore the pay range are established for that position. Of course, management could decide to increase the grade level by adding higher-level responsibilities or reduce the grade by removing some grade-controlling duties.

While a position-based system has the advantage of fostering pay equity, it sometimes makes it difficult for an Agency to meet its needs by taking into account special qualifications or contributions of an individual. For this reason there have been many proposals to reform or replace the General Schedule with a more flexible system, and several agencies have been permitted to conduct demonstration projects using systems that are less dependent on the specific duties of a position and give greater weight to the qualifications, skills, or contributions of individual employees.

Longevity and performance can change the amount which employees in the same grade are paid. Employees who remain in the same GS grade for a long time will have their salaries increased as they progress through the steps of the grade. The awarding of quality step increases for outstanding performers can accelerate this process. (See Chapter 12.)

1-6. Pay Systems

1-6-1. Introduction

Pay is set using the rules that apply to the pay system covering the position. Federal employees are covered by a variety of pay systems. Most NASA employees are in positions covered by the General Schedule (GS). A few GS employees are still covered by the performance Management and Recognition System (PMRS), which officially "sunsetted" in 1993 (see Chapter 9 for complete information on this system and how to set pay for employees covered by it). Others are in positions covered by the Federal Wage System (FWS) or are in the Senior Executive Service (SES). A few employees in the Agency receive "administratively determined" pay like those employees in high-level Scientific and Professional (ST) positions, Other Senior Level (SL) positions, and those in NASA Excepted positions.

1-6-2. General Schedule (GS)

The Classification Act of 1949 established the General Schedule. As explained in section 1-5, it is a position-based system with grades based on the duties and responsibilities of the position. The Classification Act defines each grade level, and based on these descriptions, OPM issues classification standards for job series and grades.

Employees in the General Schedule work in professional, administrative, technical, and clerical occupations. Often the General Schedule is said to cover white-collar positions as opposed to the Federal Wage System, which covers blue-collar positions.

There are 15 grades, and each grade has 10 steps. At one time there were 18 grades, but the SES and other senior level positions have replaced grades 16 to 18. There is one General Schedule, but with the passage of FEPCA, the United States was divided into locality pay areas. Depending on where a position is located, an employee's basic GS pay is increased by the percentage for that locality. Chapter 5 explains locality pay.

Special salary rates for GS positions may be authorized when significant recruiting and/or retention problems are caused by substantially higher

private sector pay for comparable work, for example engineering and medical officer positions. OPM also may establish special salary rates for positions at remote work sites or with undesirable working conditions. Special salary rates are reviewed at least annually and adjustments made as warranted by existing labor market conditions and Agency staffing needs. Special rate scales have 10 steps, but the first step of the grade can be as much as 60 percent higher than the first step of the normal GS grade, and the other steps are correspondingly higher. Chapters 3 and 4 explain how to set pay for employees moving in and out of special rate positions.

1-6-3. Federal Wage System (FWS)

The Federal Wage System (FWS) is the pay system covering employees who work in trades, crafts, and skilled and unskilled labor positions. Pay is based on prevailing rates for similar occupations in the geographic area. The FWS has three major pay plans: wage grade (WG), wage leader (WL), and wage supervisor (WS). Like the GS, it is a position-based system. Chapter 17 describes the FWS.

1-6-4. Senior Executive Service (SES)

The Senior Executive Service (SES) covers employees who work in top management positions classified above grade 15. It does not include Presidential appointees. The SES has a pay for performance system. There are two pay ranges, a higher one for agencies with an OPM certified SES performance appraisal system and another lower rate range for agencies without a certified performance appraisal system. Unlike the GS and FWS, it is intended to be a rank in person system. Once it is determined that a position is appropriately placed in the SES, the employee can be assigned to any level within their applicable SES pay range depending on his/her qualifications and contributions. The maximum payable rate for agencies with a certified SES performance appraisal system is level II of the Executive Schedule and level III of the Executive Schedule for agencies without a certified performance appraisal system. Pay levels for SES employees are recommended by Center Directors, reviewed by the Performance Review Board, and approved by the Administrator.

1-6-5. Scientific and Professional Positions (ST)

A small group of high-level professional and scientific positions in the competitive service is treated separately for pay purposes. These positions must be engaged in research and development in the physical, biological, medical, or engineering sciences, or a closely related field. Salaries are set by Agency heads, at a minimum of 120% of the base pay

rate for step 1 of GS-15 and cannot exceed the rate of basic pay payable for Level IV of the Executive Schedule, which for 2006 is \$143,000. The pay plan designation is ST.

1-6-6. Senior Level Positions (SL)

Senior level positions are high-level positions that can be in either the excepted or competitive service. They are positions that exceed GS-15 but are not part of the SES. The Administrator sets rates for senior level positions, and like ST positions fall between 120% of base pay for step 1 for GS-15 and Level IV of the Executive Schedule, which is 143,000 for the year 2006. The designation for these positions is SL.

1-6-7. NASA Excepted Positions (NEX, AD)

NASA's Space Act authorizes the Agency to fill up to 425 excepted positions. The NASA Administrator, who also must approve the use of this authority to fill a position, administratively determines the pay for these positions. Generally, authority is approved for positions where special recruitment needs make it impractical to use the usual classification system to establish, staff, and compensate a position (e.g., in order to offer a higher salary to a world-class scientist). The maximum payable rate is equivalent to Level III of the Executive Schedule, which for the year 2006 is \$ 152,000. The pay plan designation is AD. These positions are often referred to as NEX positions. They may not be used to fill a job that is appropriately classified in the SES

1-6-8. Executive Schedule (EX)

The Executive Schedule is established by law. It has five levels ranging from Level I to Level V. In the year 2006 the salary rates for it are as follows:

- I. \$183,500
- II. \$165,200
- III. \$152,000
- IV. \$143,000
- V. \$133,900

NOTE: The current rates may always be found at <http://www.opm.gov/oca/>.

Cabinet officials and other high-level Presidential appointees are in the Executive Schedule. For example, the Administrator of NASA is at level II, and the Deputy Administrator is at Level III.

The pay designation for employees in the Executive Schedule is EX.

1-7. General Pay Rules

Five primary rules govern pay setting. They are:

- 1. Pay is set using the pay setting regulations and directives of the pay system to which the employee is moving.***

For example:

If an employee is moving from a WG position to a GS position, GS pay setting regulations and directives must be used. If an employee is moving from a GS position to an SES position, SES pay setting regulations and directives must be used.

- 2. Pay is set using the pay setting directives for the action that is taking place.***

For example:

If a person is being given a new appointment, pay setting regulations and directives for new appointments must be used. If an employee is being promoted, pay setting regulations and directives for promotions must be used.

- 3. Pay cannot be set at a rate below the first step or the lowest rate of a grade.***
- 4. Pay cannot be set above the top step or highest rate of a grade unless authorized under grade and pay retention regulations (see Chapter 7).***
- 5. Pay on simultaneous actions is actions is set as follows:***
 - a. Process general pay adjustments before any individual pay action that takes effect at the same time;***
 - b. Convert the employee's rate(s) of pay to reflect a change in the location of the employee's official worksite, if applicable;***
 - c. Process any within-grade increase or quality step increase to which the employee is entitled;***
 - d. Process any promotion action using the rates of pay and pay ranges in the sequence prescribed in 5 CFR 531.214;***
 - e. Process remaining individual pay actions that take effect at the same time in the order that gives the employee the maximum benefit.***

For example:

If a GS employee is due a within grade increase and a promotion on the same date, the within grade increase is calculated first, and the two step promotion rule is then applied using the employee's new step as the base. This often results in the employee being placed in a higher step in the new grade than would otherwise be the case. Chapters 4 and 12 provide additional information on this situation. The only exception to this rule concerning the processing of simultaneous actions is that when there is a general pay increase, it must be processed before other actions.

Subsequent chapters of this guide will provide additional explanations and examples of these rules and exceptions

Chapter 2

PAY SETTING FOR INITIAL APPOINTMENTS

2-1. Introduction

This chapter covers:

- The rules for setting pay when an individual receives an initial appointment to the Federal government
- Appointments above the minimum step of the grade
- Recruitment bonuses
- Pay for critical positions.

2-2. Authority

- a. Law authorizing appointments above the minimum: 5 USC 5333
- b. Law authorizing recruitment bonuses: 5 USC 5753
- c. Law authorizing pay for critical positions: 5 USC 5377
- d. OPM regulations concerning determining rates for special rate employees: 5 CFR 530.306
- e. OPM regulations concerning appointments above the minimum: 5 CFR 531.212
- f. OPM regulations concerning recruitment bonuses: 5 CFR 575.101 to 114
- g. NASA policy on appointments above the minimum and recruitment bonuses: Chapters 2 and 4 of NPR 3530.1
- h. NASA policy on pay for critical positions: NPR 3530.1, NASA Flexibility Act of 2004

2-3. General Rule

The general rule is that persons receiving initial appointments to the Federal government are appointed at the first step or lowest level of the grade. For positions for which a special rate has been authorized, appointments are made at step 1 of the special rate schedule, which is higher than step 1 of the regular schedule for the grade.

NOTE: Throughout this document, we will refer to *“base GS schedule”* and *“regular GS schedule.”* These terms are used interchangeably to refer to the nationwide GS schedule, which does NOT include locality rates or special salary rates.

For example, an individual appointed to a regular rate GS-11 position in Washington, DC, in the year 2006 would be appointed at step 1 and paid \$54,272. An individual appointed to a GS-11 medical officer position for which there is a special rate would be appointed at the first step on the special rate scale and paid \$58,509.

2-4. Exceptions

There are two major exceptions to the general rule. Persons with superior qualifications may be appointed above the first step of the grade (section 2-5), and persons with prior Federal service may have their salary set in accordance with the highest previous rate (HPR) rule (see Chapter 3).

2-5. Superior Qualifications Appointments

2-5-1. Purpose

Superior qualifications appointments, also known as appointments above the minimum or advanced-in-hire rates, are designed to help Federal agencies to compete with the private sector to attract applicants with superior or unique qualifications. Although this authority is a valuable tool to help NASA attract the best and the brightest, Centers have a fiscal responsibility to offer the lowest salary necessary to attract a candidate. A superior qualifications appointment should be made when the candidate otherwise might decline the position.

2-5-2. Coverage

Superior qualifications appointments may be made for positions at any grade of the General Schedule, and they may be made for positions with regular or special rates. There is a comparable authority for Federal Wage System positions, which is explained in Chapter 17. These appointments may be made in the competitive or excepted service, and they may be made for permanent, temporary, full-time, and less than full-time positions.

Note: Even though these actions are referred to as superior qualifications appointments, the authority to make them is solely a pay setting authority. It is not an independent authority to make the actual appointment. To use this authority, there must be an independent source of appointing authority such as being within reach as the result of the competitive examining process, being eligible for reinstatement, or being eligible under an appropriate excepted authority such as for attorneys.

2-5-3. Eligibility

To be eligible for a superior qualifications appointment, this must be the first Federal appointment for a prospective employee, or he/she must have a break in Federal service of at least 90 days. For determining what is Federal service, service with the Government of the District of Columbia which began before Oct. 1, 1987, is counted.

Example 2a:

Jack began employment with the District of Columbia Government on September 1, 1987 and continued to work there without a break until July 1, 2000. If a Federal agency wanted to appoint him on July 2, he could not be given a superior qualifications appointment because his employment with the DC Government began before Oct. 1, 1987, and 90 days has not elapsed since the end of his service. On the other hand, if in 1990 Jack had a break of 90 days and then returned to the DC Government and then left on July 1, 2000, he could be given a superior qualifications appointment by a Federal agency on July 2 because his current employment with the DC Government began after Oct. 1, 1987.

Employees on temporary or term appointments who are converted to a permanent appointment are eligible for superior qualifications appointments. This is a relatively new change. Previously employees on a time-limited appointment had to have a break in service of 90 days in order to be eligible for a superior qualifications or special needs appointment.

2-5-4. Requirement for Prior Approval

Superior qualifications appointments must be approved prior to an individual entering on duty. Authority to make appointments based on superior qualifications or special needs has been delegated to Center Directors. See below for criteria and documentation.

Example 2b:

Cindy entered on duty on September 1 believing that she would be appointed at GS-13 step 4, but unfortunately the personnel office had not approved the higher rate. She must be paid at step 1.

The Agency may seek a variation from OPM to permit Cindy's pay to be set at step 4. If the variation is approved, her salary may be increased after the date of the approval, but the increase may not be made retroactively.

2-5-5. Exceptions to the 90-Day Rule

There are certain types of service that do not block the use of the superior qualifications authority regardless of whether they occur immediately before the appointment is made. They are:

- a. Employment under a time-limited or non-permanent appointment in the competitive or excepted service;**
- b. Employment under an appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304; or**
- c. Employment under a provisional appointment designated under 5 CFR 316.403.**

2-5-6. Criteria

A superior qualifications appointment may be based on either (1) a combination of superior qualifications and a need to match current income or a job offer or (2) a special need of the Government.

2-5-7. Superior Qualifications

A superior qualifications determination may be based either on the relevance of the candidate's experience and education to the particular work he or she will do, or on the quality of the candidate's accomplishments compared to others in the field. In determining what would be expected of any well-qualified candidate and what would make a candidate superior, an Agency need not apply an absolute standard but may consider the overall quality of candidates available and the particular requirements of the position being filled. If many candidates showed high-level experience or education directly pertinent to the position, a superior candidate might be expected to demonstrate an outstanding reputation in the field through publications, lectures, or leadership roles in professional organizations. On the other hand, when there is a shortage of qualified applicants, a candidate may be found to be superior without having unusual accomplishments, based on a finding that he or she is better able to perform the needed work than other candidates who were recruited or who could reasonably be expected to respond to renewed recruiting efforts. A higher step would be appropriate if the candidate otherwise would decline the position.

For example, if after reasonable recruitment efforts, a Center is only able to locate one qualified candidate, it would be reasonable to determine that he/she has superior qualifications (assuming the candidate would not accept the position unless a higher step is offered). Also, when determining what constitutes superior qualifications, the grade level must be considered. For example, it would not be reasonable to expect that an applicant for a GS-7 position would have publications or other recognition that might indicate superior qualifications at the GS-15 level. Nevertheless, the GS-7 applicant may have superior qualifications when compared with other applicants for that grade level.

2-5-8. Matching Income

The fact that an individual has superior qualifications by itself is not sufficient to justify an appointment above the minimum. It must be shown that accepting the appointment at the first step of the grade would cause the applicant to forfeit existing income or income which he/she is likely to earn. In addition to salary, other factors may be considered.

Salary

The simplest situation is when an individual is clearly earning a salary that exceeds the first step of the grade, and he/she makes it clear that NASA's offer will not be accepted unless the current salary is matched. If a salary falls between two steps, Centers may offer the higher step. *It is not appropriate to offer a higher step merely to match existing salary. The record must reflect superior qualifications and the fact that the candidate declined a lower salary.*

However, if the applicant is requesting a salary that substantially exceeds his/her existing salary, Centers must be sure to document the basis for the increase. The following discussion provides some rationales for offering salaries that at first may appear to substantially exceed an applicant's current salary but in fact would be justified.

Fringe benefits

Fringe benefits may be considered if they substantially exceed the Government's benefits package.

Example 2c:

John is earning \$40,000 per year, and his company pays 100% of his health and life insurance premiums. To obtain comparable health and life insurance in the Federal government, he will have to pay \$3,000 per year in premiums. Therefore, it would be proper to use a figure of \$43,000 (\$40,000 plus \$3,000) when determining the salary that should be matched.

It would not be proper to consider fringe benefits that it is illegal for the Government to provide, for example, transportation to and from work.

Cost of living

Differences in the cost of living may be considered. Salaries that appear to be the same may be significantly different if differences in the cost of living are included.

Example 2d:

Karen is considering an offer of a GS-12 position at Ames. She is currently earning \$53,000 in another part of the country where the cost of living is 10% lower than the Silicon Valley. For this reason, she cannot accept step 1 of GS-12, \$54,003. Because of the vast difference in the cost of living, her current salary is approximately equivalent to a salary of \$58,300 at Ames. Therefore, it would be appropriate to offer her step 4 of GS-12, \$59,403.

Other sources of income

In addition to their primary incomes, applicants may have other sources of income such as consulting fees. When accepting a Federal position, they may have to give these up, perhaps because of conflict of interest provisions or scheduling problems. If it is the Federal employment that will cause applicants to give up these sources of income, that income may be considered when determining the appropriate salary to offer. The income should not be considered if applicants will not have to give it up when accepting a Federal position.

In most cases, investment income should not be considered when determining the appropriate salary. However, there may be situations where conflict of interest laws may require that an applicant sell stock or an interest in a property. In these cases, the lost income can be considered.

If an applicant can demonstrate that he/she regularly is paid for a certain amount of overtime, the amount that he/she receives may be considered.

If an applicant can demonstrate a consistent pattern of receiving bonuses or pay increases, these may be factored in when considering the income that would be forfeited.

Example 2e:

Clark earns a base salary of \$60,000. For the past several years, his company has paid out a 10% bonus in December. If he accepts a position with NASA in August, he will not be eligible for that bonus. It may be considered, and therefore, the income that he would be giving up is \$66,000 (\$60,000 plus 10% of \$60,000).

Income from work on a less than full-time basis

If an individual does not have a salary but earns income from consulting fees or other work that is less than full-time, Centers should try to examine the pattern of earnings over several years. The existence of one big contract should not necessarily be used to calculate the income that the applicant would be giving up. On the other hand, if he/she can show that this level of income is likely to continue, it should be considered. Steady increases in income may also be taken into account.

Example 2f:

Kathy began an independent consulting business in 1997, when she earned \$30,000. In 1998, she earned \$40,000, and in 1999, she earned \$50,000. In the first half of 2,000 she has already earned \$30,000. Therefore, it would be appropriate to use an income of \$60,000 (\$30,000 times 2) when determining the income that she would be forfeiting.

It is not appropriate to prorate a salary that is earned on a part-time basis. For example, if a teacher earns \$45,000 for 9 months of work, it would not be appropriate to increase that salary by 1/3 to account for the 3 months when he/she is not working. On the other hand, if during those 3 months, he/she earns an additional \$10,000 by teaching summer school, that income should be included.

It is not appropriate for Federal agencies to use the superior qualifications authority to compete with each other. Thus, for example, if an individual has earned his/her primary income as a Federal consultant under 5 USC 3109, it would not be permissible to use those earnings to justify an appointment above the minimum.

Private Sector Offer

There may be situations when an individual has a private sector offer that is substantially higher than his/her recurrent income. In these situations, the job offer may be considered. In most cases, the job offer should be documented in writing.

Example 2g:

Ken is being offered a GS-14 position at GSFC. He is currently earning \$68,000. However, he has a job offer from a private company that would pay him \$76,000. Therefore, it would be appropriate to offer him step 3 (\$76,750).

Situations can arise where it would be improper for an applicant to negotiate a firm employment offer with a private sector company if, for example, the Federal position which he/she is considering has contracts with that company. On the other hand, if he does not take the Federal position, it is clear that he would receive an offer. In these situations, it would be appropriate for a NASA supervisor or personnel specialist to contact the company and determine what the offer would be. In this case, that offer could then be used when considering the appropriate salary to match.

No salary information

Sometimes an applicant who wants to come to work for NASA is not currently earning a salary commensurate with her qualifications and does not have a specific job offer in hand. Nevertheless, there may be a clear indication that the candidate could command a high salary. This is often the case with persons who have just completed school or persons who may have been working for a nonprofit organization. In these cases, it would be counter-productive to require that the individual obtain a firm job offer just so NASA could match it. It would be appropriate for NASA to base its salary offer on the salary that the applicant could reasonably expect to command. This could be based on Bureau of Labor Statistics information, salary surveys conducted by a NASA Center or other Federal Agency, or current recruitment experiences for similar positions.

Example 2h:

Glenn is a doctor, and after completing a residency in neurosurgery and several fellowships, he spent several years volunteering for the Peace Corps. He would like to come to work for JSC in a GS-13 medical officer position. Because of his interest in NASA, he has not sought other job offers, and because he has been volunteering for the Peace Corps, he does not have current income. However, NASA surveys hospitals and universities in the Houston area and finds that they are offering physicians with comparable qualifications \$110,000 per year and up. Therefore, it would be appropriate to offer Glenn step 10 of GS-13 on the special rate range for medical officer positions, \$103,130

However, it may be possible to consider one of the approaches discussed in this section to determine the appropriate income level to be matched, such as a pattern of earnings from other sources in previous years or a reasonable expectation that the individual could receive an offer from a private sector source.

Example 2i:

For the past year, Carol has earned 100% of her income as a consultant for a Federal agency. She earned \$86,000. GRC would like to offer her a GS-13 position. In several years prior to her work for the Federal government, she consulted for private companies, and she expects to return to this work within the next month. Her average earnings were \$86,000. Therefore it would be appropriate to offer her GS-13 step 5, \$86,105. In fact, it might be appropriate to offer her a little more because when examining income from 2 or 3 years ago, it is permissible to consider it in terms of this year's dollars by increasing it for inflation, as measured by the consumer price index between that year and the current year. Presume the consumer price index increased by approximately 3%. \$86,000 earned then could be considered to equate to \$88,580. Therefore, it might be appropriate to offer her GS-13 step 6, \$88,637.

Caution: Centers are reminded that just because income can be matched, a superior qualifications appointment may not always be appropriate. As explained in section 2-5-7, the applicant must also have superior qualifications. Other factors such as the pay levels of current employees should also be considered.

2-5-9. Special Need Criteria

In rare situations, NASA will have a special need for an applicant who would add exceptional value to the Agency but who does not meet one or both of the criteria described in sections 2-5-7 and 8 (does not have superior qualifications and/or is not giving up or foregoing income to accept the position). In these cases, an appointment above the minimum can still be made if it can be demonstrated that the applicant is needed to support NASA's mission or a significant project.

In practice, it is unlikely that an applicant would meet the special need criteria if he/she didn't have superior qualifications. In most cases the special need criteria would be used when the applicant would not be foregoing income equal to the salary that he/she is seeking. In other words, the applicant is seeking a salary substantially higher than existing income or any firm job offers. Note: As explained above, even in many of these cases, the special need authority still does not have to be used because the higher pay still can be justified on the basis of the salary which an applicant with comparable qualifications could reasonably expect. In the vast majority of cases, a superior qualifications appointment will meet the criteria in sections 2-5-7 and 8.

2-5-10. Relation to Recruitment Bonuses

OPM's regulations require that when considering appointments above the minimum, agencies must determine whether a recruitment bonus could meet the need instead of the appointment at the higher step. This is important because a recruitment bonus is a one-time payment while an appointment at a higher step is permanent.

Example 2j:

Gary is being offered a GS-11 position in Washington, DC. He is currently earning \$61,000 and is seeking GS-11 step 5, \$61,510. The position has promotion potential to GS-12. If he is appointed at GS-11 step 5, his salary will have to be set at GS-12 step 2, \$67,216 when he is promoted and the two-step promotion rule is applied (see Chapter 4). On the other hand, if he is appointed at GS-11 step 1, \$54,272 and given a \$13,568 recruitment bonus, his overall salary the first year will be slightly higher than GS-11 step 5, but when he is promoted to GS-12, his salary would be set at step 1, \$65,048.

There may be situations where the disparity between the employee's current income and the Federal pay scale is so great that both an appointment above the minimum and a recruitment bonus are necessary. This is permitted, but it is important to document both actions thoroughly.

2-5-11. Documentation

Use of the superior qualifications authority may be closely monitored by agencies such as OPM and GAO. Therefore, it is important that Centers thoroughly document all cases.

The documentation must be complete enough to permit reconstruction of the action. Documentation must include:

- a. The superior qualifications of the individual or special need of the Agency that justified use of this authority;
- b. The factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and
- c. The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

2-6. Recruitment Bonuses

2-6-1. Purpose

Recruitment bonuses were one of the flexibilities added by FEPCA and modified by the NASA Flexibility Act of 2004 and the Federal Workforce Flexibility Act of 2004. Agencies are permitted to pay bonuses to help in the recruitment of employees who otherwise might not accept Federal employment. However, the rules governing bonuses paid under the NASA Flexibility Act have some unique requirements not included in the Federal rules and must be considered when authorizing a recruitment bonus.

These include:

- Not more than 25% of the total dollar amount of bonuses paid in a fiscal year may be paid to employees in supervisory or managerial positions;
- The enhanced bonus amounts (e.g., those greater than 25% of rate of basic pay) may only be authorized to meet a critical need of the Agency as defined by the NASA's Workforce Plan;
- The bonus is calculated as a percentage of the rate of basic pay (i.e., the General Schedule) while the Federal rules calculate the bonus as a percentage of the locality rate schedule; and
- NASA must report annually to Congress on its use of recruitment bonuses.

NOTE: These additional restrictions on recruitment bonuses authorized under the NASA Flexibility Act make it generally more advantageous to authorize bonuses under the Federal Workforce Flexibility Act. For this reason the information and guidance that follows below is based on the overall Federal rules and not the NASA unique flexibilities. For complete information on recruitment bonuses authorized under the NASA Flexibility Act go to the Interim Implementing Policies at <http://nasapeople.nasa.gov/hclwp/index.htm>.

2-6-2. Coverage

Recruitment bonuses may be paid to GS, AD (NEX 42 USC2473(c)), SES, SL, ST, Law enforcement, prevailing rate and Executive Schedule employees. They may not be paid to the head of an Agency including the NASA Administrator, noncareer SES or Excepted Service Schedule C appointees.

Recruitment bonuses may be paid to full or part-time employees, and they may be paid to employees on time-limited appointments (competitive or excepted). However, because of the minimum 6-month service agreement requirement explained in section 2-6-5, the appointment must be for at least 6 months.

Bonuses may be paid only to newly appointed Federal employees or persons with at least a 90-day break since their last Federal employment. The following types of appointments are exceptions to the 90-day rule, and applicants converted from them may be paid recruitment bonuses even if there is no break in service:

- a. A time-limited or non-permanent appointment in the competitive or excepted service;
- b. Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;
- c. An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;
- d. Service as an employee of a nonappropriated fund instrumentality of the Department of Defense when moving to a position outside of the Department of Defense or of the Coast Guard when moving to a position outside the Coast Guard; or
- e. Employment under a provisional appointment designated under 5 CFR 316.403.

2-6-3. Authority

Centers have the authority to approve the payment of recruitment bonuses. However, the Administrator has delegated the authority to approve them for all SES, ST, SL, and NASA Excepted Service (NEX) positions to the Associate Administrator for Institutions and Management. Centers wishing to request approval of a bonus for one of these positions should submit the request to the Office of Human Capital Management accompanied by complete documentation which demonstrates that the criteria described in section 2-6-7 are met.

2-6-4. Requirement for Prior Approval

Recruitment bonuses must be approved before the applicant enters on duty. Once an individual enters on duty, NASA has no authority to approve a recruitment bonus.

2-6-5. Service Agreements

Before a recruitment bonus may be paid, the applicant must sign a service agreement to remain with NASA for the period established in the service.

An employee who leaves NASA prior to completing the agreement must repay it on a pro rata basis receiving credit for each full month worked.

Example 2k:

Carla received a recruitment bonus of \$15,000 and signed a 12-month service agreement. After 6 months and 17 days, she left NASA to go to another Federal agency. Because she did not complete half of her service agreement, she must repay \$7,500, which is half of \$15,000. She does not receive credit for the excess 17 days because it was not a full month.

An employee who is separated involuntarily **not** for cause does not have to repay the bonus. If an authorized official terminates a service agreement based on management needs, NASA must pay any recruitment incentive payments attributable to completed service.

An authorized official must terminate a service agreement if an employee is demoted or separated for cause (i.e. unacceptable performance or conduct), if the employee receives a rating of record of lower than "Fully Successful" or equivalent, or the employee fails to fulfill the terms of the service agreement. The employee will retain any recruitment incentive that is attributable to completed service; receive unpaid recruitment

incentive that is attributable to completed service **only** if approved by the agency under the terms of the service agreement; and must reimburse the Federal Government for any recruitment incentive payments received that are attributable to uncompleted service.

An employee whose position description does not provide for mobility or who has not signed a mobility agreement and who is separated for declining a reassignment to another commuting area would not have to repay the bonus. However, if a mobility requirement is added after the employee is on duty and the employee accepts one reassignment to another commuting area, the declination of a subsequent reassignment to another commuting area would not relieve the employee of the requirement to repay the pro rata share of the bonus.

NOTE: Centers may waive the repayment of a bonus when it is determined that repayment would be against equity or good conscience or not in the public interest. (See NPD 9645.2D: Delegation of Authority to Waive Claims for Erroneous Payment of Pay and Allowances, Travel, Transportation, and Relocation Expenses and Allowances.)

Example 2I:

Kevin received a recruitment bonus and signed a 12-month service agreement. 6 months later, he had to leave NASA in order to move outside the commuting area so that his wife could receive experimental medical care for a life threatening illness. In a case such as this, it would be appropriate to waive the repayment of the pro rata share of the recruitment bonus.

2-6-6. Amount and Payment of Bonuses

Recruitment bonuses may be paid in a lump sum, in equal installments (e.g., on a biweekly, monthly, quarterly basis), in variable payments at the end of specified periods, as a final lump sum payment, or in a combination of payment methods. They are not part of basic pay for any purpose. They can be up to 25% of the employee's annual rate of basic pay **including** locality pay and special salary supplement, if authorized under the Federal Workforce Flexibility Act, multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years) OPM must approve any request under the Federal rules to pay an incentive exceeding 25% up to 50% of the employee's annual rate of basic pay, multiplied by the number of years in the service period (not to exceed 100% of the employees annual rate of basic pay at the beginning of the service period.

Center Directors are authorized to pay recruitment bonuses approved under the NASA Flexibility Act except for SES/ST/SL/NEX positions (see para 2-6-3 above). Further, under the NASA Flexibility Act, authorizing officials may approve a bonus up to a maximum of 50% of the annual rate of basic pay (including locality or special rate supplement) as of the beginning of the service period multiplied by the service period (not to 100% of the annual rate of basic pay) when the position requires competencies identified in the NASA Workforce Plan as meeting a critical need of the Agency. If an employee is on a part-time schedule, the bonus is calculated as a percentage of the part-time salary.

Example 2m:

Sarah is being hired at GS-9 step 1 for a position at Ames, \$37,240. She is being offered a 25% recruitment bonus. Her bonus will be \$9,310 or 25% of \$37,240, which is the rate for GS-9 step 1 of the basic General Schedule with locality pay. If she were being hired for a part-time position of 20 hours per week, her bonus would be 50% of \$9,310 or \$4,655. If Sarah were being hired as an aerospace engineer, her special rate salary for GS-9 step 1 would be \$42,091. In that case her bonus would be 25% of \$42,091 or \$10,522.75.

A bonus may be paid once it has been approved and the new employee has signed the required service agreement. If these conditions are met, it may actually be paid before the employee enters on duty.

2-6-7. Criteria

Each bonus must be approved by a higher-level official than the recommending official, except where the Administrator is both the recommending and approving official.

In order to pay a bonus, there must be a written determination that in the absence of the bonus, the Center would encounter difficulty in filling the position. Centers may make this determination for a group of positions such as all aerospace engineers at grades 13 and above.

Under the Federal Workforce Flexibility Act, when determining whether a recruitment bonus should be paid and in determining the amount of any such payment, Centers should consider the following factors, as applicable in the case at hand:

- a. The availability and quality of candidates possessing the competencies required for the position, including the success of recent efforts to recruit candidates for similar positions using indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
- b. The salaries typically paid outside the Federal Government for similar positions;
- c. Recent turnover in similar positions;
- d. Employment trends and labor-market factors that may affect the ability to recruit candidates for similar positions;
- e. Special or unique competencies required for the position;
- f. Efforts to use non-pay authorities, such as special training and work scheduling flexibilities, to resolve difficulties alone or in combination with a recruitment incentive;
- g. The desirability of the duties, work or organizational environment, or geographic location of the position; or
- h. A position (or group of positions) for which OPM has approved the use of a direct-hire authority applicable to the position (or group of positions) under 5 CFR part 337, subpart B.

Under the NASA Flexibility Act rules, the basic eligibility criteria includes the following:

1. Any case in which the Agency is considering paying a bonus under these provisions must be evaluated using the basic eligibility criteria outlined below in the matrix and the explanatory paragraphs. If the situation does not meet the minimum requirements as identified below, no bonus payment may be made.

BASIC ELIGIBILITY CRITERIA
Recruitment, Relocation, Redesignation Bonuses

Criteria	Definition	Elements
Degree of Difficulty in Recruitment	Extent to which quality candidates possessing the required skills and experience are available in the labor force.	(a) Recent recruitment efforts for comparable positions in the same geographic area demonstrate that it is difficult to find well-qualified candidates.
		(b) Positions requiring the skills are often vacant, and fill times are prolonged.
		(c) Positions requiring the skills typically have a high turnover rate.

		(d) Labor market trends demonstrate that the Agency is likely to experience difficulty in finding well-qualified candidates now and/or in the future.
		(e) Candidates offered positions requiring these skills frequently decline the job offer.
		(f) Position is in a new or emerging technical area where the organization has a demand for the skills, but little recruitment history.

2. Evaluating “Degree of Difficulty in Hiring”: To meet the minimum requirements for bonus eligibility under this section, the position normally must meet any two of elements (a) through (e) OR element (f).
3. If the position does not meet at least two of the elements, identified above, but presents issues of equivalent difficulty in the recruitment process, they may be used in lieu of elements (a) through (e) in justifying payment of a bonus.
4. Each case file must include documentation explaining and supporting the basis of payment eligibility. Where a position is described as having a prolonged fill time or a high turnover rate, the justification must include information supporting that determination in the context of the specific type of work involved.

The fact that a position is hard to fill does not by itself automatically mean that a recruitment bonus is appropriate. Centers must document that the applicant is well qualified and that he/she is not likely to accept the position without the bonus.

You will note that the regulations for superior qualifications appointments and recruitment bonuses both require that the other option be explored. This doesn't mean that one or the other option is favored, but it does mean that agencies are expected to examine the full range of flexibilities before deciding on one or a combination of options.

2-6-8. Documentation

Centers must keep a written record of each determination to pay a recruitment bonus. The records should be complete enough to permit reconstruction of the action including the basis for determining that the position would be difficult to fill without paying the bonus, the

qualifications of the applicant, and the basis for determining that the applicant was not likely to have accepted the position without the bonus. The documentation should also make note of the possibility of using the superior qualifications appointment authority instead of or in combination with the recruitment bonus. Centers should also maintain copies of service agreements, repayments, and waivers. Documentation on each bonus must be retained for 3 years.

2-7. Pay for Critical Positions

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9807 authorizes the Administrator to set pay for a NASA employee occupying a position which requires expertise of an extremely high level in a technical or professional field, critical to NASA's successful accomplishment of its mission.

The authority can be used to recruit new employees and for current NASA employees, but not for employees of other Federal agencies who transfer to NASA.

The salary could be set at a rate up to that authorized for the Vice President. If set below this rate, the employee could not receive an allowance, bonus, or other payment during any calendar year that would cause his/her total salary to exceed the Vice President's annual salary.

In order to ensure that this authority is used for truly exceptional cases, it is limited to 10 employees at any one time.

Chapter 3

HIGHEST PREVIOUS RATE AND MAXIMUM PAYABLE RATE RULES

Note: Unless otherwise stated, the rates used in this chapter are for the year 2006.

3-1. Introduction

This chapter covers the rules concerning the highest previous rate (HPR) and the maximum payable rate (MPR) as they apply to the General Schedule. There are comparable rules for the Federal Wage System, which are covered in Chapter 17.

The chapter covers the basic principles and procedures surrounding these rules as well as some of the lesser known but important rules related to these subjects.

3-2. Authority

- a. Law, rate on change of position or type of appointment: 5 USC 5334
- b. OPM regulations concerning determining rates for special rate employees: 5 CFR Part 530.Subpart C
- c. OPM regulations concerning highest previous rate and maximum payable rate: 5 CFR 531.221
- d. NASA Special Pay and Allowances Provisions: Chapter 1 of NPR 3530.1A

3-3. Basic Policy

Agencies have wide discretion in applying the HPR. It is NASA's policy that current Federal employees and persons hired from outside the Agency will be given the benefits of the HPR to the maximum extent permitted by law and regulation.

Regulations allow exceptions in the following situations:

- a. Lack of funds;
- b. Appointment of a temporary employee;
- c. Situations where an employee's prior experience and training has little or no relevance to the position;
- d. Internal pay alignment considerations

NASA's policy is to pay a current NASA employee being affected by a personnel action to the extent permitted by law and regulations. Pay will be set at the step of the grade that most nearly matches the current pay without reducing it. Exceptions to this general policy may be made for the following reasons:

- a. Lack of funds; when lack of funds is used as an exception, the exception must be applied uniformly. Centers should keep in mind that this exception by itself does not provide the authority to reduce an employee's pay. In most cases, an employee would have to agree to a reduction in pay or might be entitled to RIF or adverse action procedures.
- b. Instances where the maximum rate of the employee's current grade was below the HPR, and the HPR can be applied again when the employee moves into another grade. Example 3a illustrates this situation.
- c. Change to a lower grade at an employee's request: In this situation, the Center and the employee will agree on the rate. Centers should require employees to sign a statement agreeing to the grade, step, and actual dollar rate. Although there is discretion when setting the salary on a change to a lower grade, the employee must receive at least a two step increase when he/she is repromoted. Thus, if an employee receives the maximum payable rate on a change to a lower grade and soon after is repromoted, the employee could receive an unintended windfall, (see Chapter 4 on promotions).
- d. Change to lower grade for cause; Pay may be set below the employee's current rate.
- e. Employees being promoted after having been demoted through no fault of their own; this is similar to exception "b" above because the HPR can be applied each time there is a subsequent personnel action, (see example 3a and Chapter 4).
- f. Upon an employee's return to his/her permanent position from a temporary promotion: This permits the employee's pay to be set below the pay he/she was receiving on the temporary promotion. Example 3e illustrates this situation. NOTE: Salary earned on a temporary promotion of less than 1 year may be used as HPR only when the employee is permanently placed in a position at the same or higher grade. The employee should sign a statement prior to the temporary promotion, outlining the salary implications. Pay should be set at the rate it would have been if not for the temporary promotion (including any WIG's which the employee would have received).

Centers should document the basis for exceptions.

In NASA when an employee's pay would fall between two steps, he/she will be given the higher step.

3-4. Definition of Highest Previous Rate

In essence, the HPR is an exception to the general rule concerning pay setting. The general rule is that an employee's pay is set at his or her current step or at the first step of the grade if we are talking about a new appointment, (see Chapter 2 for a discussion of the general rule for new appointees and exceptions such as appointments above the minimum). With only a few exceptions explained in section 3-6, the HPR permits the setting of pay at a higher step based on salaries previously earned in any pay system (including but not limited to FWS, SES, SL, and ST) and in any branch of the Federal government.

Note: The HPR may be based only on service in civilian positions. It may not be based on uniformed service including the military services, the Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

3-5. Use of HPR

The law and regulations give agencies wide latitude in using the HPR.

There are some requirements that must be met in order for HPR to be used.

HPR may be used when an employee is transferred, reassigned, promoted, demoted, or reemployed. Keep in mind that even if it was not used for one action, it may be used for a subsequent action.

Example 3a:

Paul is a GS-9 step 10, \$42,091, and he accepts a GS-5 position. The Center exercises its discretion not to use HPR and sets his salary at GS-5 step 1, \$21,370. 6 months later, Paul is reassigned to a GS-5 position in another activity, and that activity exercises its discretion to set Paul's salary at step 3 of GS-5, \$22,794, which is between Paul's current step 1 salary and the HPR. Finally Paul is promoted to GS-8, and that activity decides to use the HPR and MPR rules and set his salary at step 10 of GS-8, \$38,108.

3-5-1. For a rate to be used as HPR, it must have been earned on a regular tour of duty meaning full-time or part-time. Rates earned while an

employee has been intermittent or when actually employed may not be used as HPR.

3-5-2. The HPR must have been earned under an appointment not limited to 90 days or less, in other words, an appointment of 91 days or more.

Note: The employee doesn't actually have to work 91 days.

Example 3b:

Cindy is given a six-month appointment on January 1, but she resigns on February 15. The rate she earned may be used as her HPR because even though she worked less than 91 days, her appointment was for 6 months.

3-5-3. The requirement may also be met by a series of appointments that total at least 90 continuous days.

Note: There is a nuance that is often overlooked. If we are talking about one appointment, it must be at least 91 days for HPR to be used; but if we are talking about a series of short appointments, they only have to total 90 days.

Example 3c:

Wade is given one appointment not to exceed 90 days. The rate earned under that appointment may not be used as the HPR.

Laura is given three consecutive 30-day appointments that total 90 days. Her rate may be used as the HPR.

3-5-4. HPR may not be based on a rate earned as an expert or consultant appointed under 5 USC 3109.

Note: Many agencies have separate statutory authorities, which permit them to appoint experts and consultants under provisions other than 5 USC 3109. Rates earned on appointments made under these authorities may be used as the HPR. If you have questions, you should check with the Agency where the appointment was made.

3-5-5. HPR may not be based on a temporary promotion of less than 1 year. However, if subsequently the employee is permanently placed in the

same or higher grade than the temporary promotion, the rate earned while on the temporary promotion may be used as the HPR.

Example 3d:

Paul is given a 6-month temporary promotion to GS-9, and applying the two-step promotion rule, his salary is set at GS-9 step 3. When Paul's temporary promotion is over and he returns to his former grade, GS-9 step 3 may not be used as his HPR.

Paul resigns and is later reinstated to a permanent GS-9 position. The agency would have the discretion to use GS-9 step 3 as the HPR because he is now being placed in a GS-9 position permanently.

Note: HPR may be used for rates earned on temporary promotions of 1 year or more.

Reminder: If HPR is not used after an employee returns from a temporary promotion, the employee's salary is set as if he or she had not been on the temporary promotion.

Example 3e:

Betty has been at GS-9 step 1 for 8 months when she is temporarily promoted to GS-11 for 6 months. When her temporary promotion is completed and she returns to GS-9, she will be placed in step 2. This is because if she had not been temporarily promoted, she would have been eligible for a step increase 4 months following the date of her temporary promotion (52 weeks in step 1). In addition, the 2 months beyond the 4 months which she needed for the increase to step 2 counts toward completion of her next waiting period, so she will be eligible for an increase to step 3 10 months after she returns from the temporary promotion.

Note: Chapter 12 contains information concerning the affect of promotions on waiting periods for within grade increases. Chapter 4 contains information on WIG's and last equivalent increases.

3-5-6. The HPR may not be based on a rate earned in a position from which the employee was removed or reduced in grade for failure to complete a probationary period as a manager or supervisor.

Note: There is no similar provision concerning employees who were removed before completing the initial probationary period. Also, there is no similar provision for employees who are demoted under chapter 43 or chapter 75 for performance or conduct reasons (see section 3-3).

3-5-7. HPR may not be based on a void or improper appointment. If an Agency classifies a position to a higher grade following an OPM classification determination that the position should be at a lower grade and OPM then requires that the position be reduced to the lower grade again, the rate earned at the higher grade may not be used as the HPR.

Example 3f:

Alison is promoted to GS-11 and serves at that grade for 6 months. It is later discovered that she did not meet qualification requirements, so she was demoted back to GS-9. Because the promotion was improper, the rate earned at GS-11 may not be used as her HPR.

3-5-8. A salary earned in the District of Columbia Government may not be used as the HPR for someone who was first employed by the DC Government on or after October 1, 1987. This is because on October 1, 1987, DC established its own personnel system, which has the same status of any other city government. However, if someone was employed by DC before October 1, 1987, any rate earned may be used as HPR even if the actual rate was earned on or after October 1, 1987.

Note: Persons first employed with the District of Columbia Government on or after October 1, 1987, who come to the Federal government, are eligible for superior qualifications appointments if requirements are met, and the DC salary may be considered as current earnings. Conversely, persons first employed with the DC Government before October 1, 1987, are not eligible for superior qualifications appointments if they don't have a break in service of at least 90 days. In other words, an earned rate may be used for HPR or superior qualifications purposes, but not both (see Chapter 2).

3-5-9. Rates earned under interim relief appointments may not be used as HPR. Interim relief appointments are those appointments given to an employee who wins an initial decision from the Merit Systems Protection Board (MSPB) while the Agency petitions for review. If the Agency's petition is denied, the interim relief appointment is converted to a regular appointment and of course, HPR can be used.

3-5-10. Most agencies including NASA may not use rates earned in non-appropriated fund instrumentalities (NAFI's) as the HPR. However, the Defense Department (DOD) and the Coast Guard may use rates earned in their NAFI's if the employee moves into a GS position without a break in service of more than 3 days. Interestingly, DOD can't use HPR for employees coming from the Coast Guard, and the Coast Guard can't use it for employees coming from DOD NAFI's. NOTE: If DOD set pay based on a NAFI salary, NASA may use that salary in future pay-setting actions.

3-5-11. Rates earned in other branches of the Federal government and the Postal Service may be used as the HPR. There is a special requirement for persons who work for the Senate or the House of Representatives. If an employee is paid by the Secretary of the Senate or the Chief Administrative Officer of the House (formerly the Clerk of the House) he/she must have 2 years of employment for the rate to be used as HPR. The employment does not have to be current and does not have to be consecutive. In addition, the rate does not have to have been earned for 2 years. In fact, some times Congressional employees may be given large increases for brief periods of time if, for example, they are losing their position because a Member of Congress has lost an election. In such a case, that higher rate earned for a short time could be used as the HPR as long as total employment was at least 2 years. Of course, a Center is not necessarily required to use that salary as the HPR in such a situation (see the exceptions to the general policy for using HPR in section 3-3).

A Member of Congress may have his or her salary used as the HPR provided that he or she served for at least 2 years.

There are a variety of regional commissions such as the Appalachian and Great Lakes Regional Commissions. These are not really Federal entities, and normally salaries earned on the commissions may not be used as the HPR. However, if a Federal employee goes to work for a commission and returns to the Federal government within 6 months of leaving the commission, the salary earned at the commission may be used as the HPR (see 5 USC 5334).

3-6. Movements Involving Special Rates

NOTE: In this section and throughout the rest of this guide, examples make extensive use of engineering special rates. These are from the year 2006 and are from tables 414 and 422, which authorize worldwide special rates for engineering positions (except GS-854 computer engineers, now paid under special rates for information technology positions, tables 999A-F).

The general rule is that the actual dollar amounts for special rates established under 5 USC 5305 and 5 CFR 530 for the General Schedule and 532.251 for the FWS *may not be used* as the HPR.

Under the general rule, only *the relative position* of the special rate in the grade may be used as the HPR, not the actual dollar amount.

3-6-1. Reassignments

Special Rate to Non-Special Rate-Greater Contribution

If an employee is reassigned from a special rate position to one that does not have a special rate, without a geographic move the salary is set at the same relative step on the grade even though this results in a lower dollar amount. If there is a geographic move where different pay schedules apply, the employee's pay is set on the schedule applicable at the new worksite based on the employee's position of record before the move and then the reassignment is processed using the schedules applicable at the new worksite.

Example 3g:

Joe is at step 2 on a special rate of a GS-11 electronics engineer position, \$55,429 (table 422). He voluntarily moves to a GS-11 position that does not have a special rate. His salary will be set at step 2 of the GS-11 on the locality pay scale. If he is working at KSC, his actual salary will be \$53,705.

The actual dollar amount of a special rate may be used as the HPR for reassignments within the same Agency when the Agency makes a written determination that the employee would make a greater contribution in the new position. Keep in mind that this only applies within a department or Agency such as NASA. It does not apply to transfers between agencies. The term reassignment means movement between positions at the same grade within NASA (including between Centers).

Example 3h:

Ellen is on a GS-11 special rate aerospace engineer position at KSC. She is a step 1, which gives her a salary of \$52,349. She is accepting a GS-11 position without a special rate, and management has determined that it is more important to have her in the regular rate position than the special rate position. Using HPR Ellen's pay can be set at GS-11, step 2 on the RUS, \$53,705.

If the actual dollar amount of the special rate is not used as the HPR at the time the employee is moving out of the position, it may not be used for a subsequent action.

Example 3i:

If Joe from example 3g is later moved to another GS-11 position, the agency may not go back and use the SSR as his HPR because there has been an intervening action.

Regular Rate to Special Rate

Under the general rule, if an employee is reassigned from a regular rate to a special rate, he or she is placed in the same relative step on the grade. If there is a geographic move and different schedules apply at the new worksite, then the process described above is used.

Example 3j:

If our old friend Joe from Example 3g was moved from the regular rate of GS-11 step 2 to a GS-11 electronics engineer position, his salary would be set at step 2 on the GS-11 special rate scale, \$55,429.

Special Rate to Different Special Rate

If an employee is reassigned from one special rate position to a position with a different special rate, under the general rule his/her salary will be set at the same step in the new grade. However, if the Agency determines that it is more important to have the employee in the new position, the

actual dollar amount may be used. If there is a geographic move and different schedules apply at the new worksite, then the process described above is used.

Example 3k:

Roberta is a multi-talented employee, and she is reassigned from a GS-11, step 2 electronics engineer position (table 422) with a special rate of \$55,429 to a GS-11 aerospace engineer position. On this special rate table (table 414), step 2 is \$53,889. If the reassignment was at her request and the Center does not feel that it is more important to have her in the engineering position, her salary will be set at GS-11 step 2, \$53,889. However, if the agency makes a written determination that it is more important to have her in the aerospace engineering position, \$55,429 can be used as the HPR. On the aerospace engineering pay table, \$55,429 is equal to step 3, so her salary would be set at step 3. In this case the RUS step 3 is \$55,437, therefore pay would be set on the RUS and the employee would have not further entitlements under the SSR .

3-6-2. Changes to Lower Grade

The following discussion generally concerns voluntary changes to lower grade. A more in-depth discussion of involuntary changes to lower grade is found in Chapter 7, Grade and Pay Retention.

The general rule is to use the relative step in the salary range to set pay, not the dollar value.

Special Rate to Regular Rate

If an employee changes from a special rate position to a lower grade regular rate position, use the comparable *step* (not the salary) from the higher-grade basic General Schedule pay scale to calculate the HPR and then determine the appropriate step in the lower grade.

Example 3l

If Joe had accepted a voluntary change from a GS-12 step 2 aerospace engineer position to a regular rate position at GS-11, his HPR would be figured by using GS-12 step 2 on the basic GS scale, \$57,205. This falls between GS-11 step 8, \$56,969 and step 9 \$58,509, so his MPR is GS-11 step 9, \$58,509.

NOTE: The rule is different if the change to lower grade is involuntary, not for cause (e.g., RIF or classification). In this case, use the *salary amount*, instead of the step, to set pay. See Chapter 7 for setting pay in involuntary actions, when the MPR exceeds the payable salary at the lower grade.

Example 3m:

If Bill was working at KSC and had been reclassified (an involuntary change to lower grade, not for cause) from a GS-11 step 2 aerospace engineer position to a regular rate position at GS-9, his HPR would be figured by using his current salary on the special rate scale (\$53,889 on table 414). \$53,889 falls between GS-9 step 4 (\$53,451) and step 5 (\$54,724). His MPR would be GS-11 step 5. (Note that Joe could be eligible for grade retention, in which case, his pay would be set differently. See Chapter 7.)

Regular Rate to Special Rate

If an employee is moved from a locality rate position to a lower grade special rate position, first figure the salary on the underlying GS scale and set the salary at the comparable step on the special rate scale.

Example 3n:

If Joe were voluntarily moving from the regular rate position, GS-11 step 2, \$47,729, to a GS-9 electronics engineer position (assuming that the Agency is going to use the MPR):

1. First figure his salary on the regular GS-9 scale.
2. \$47,729 falls between GS-9 step 8, \$47,086 and step 9, \$48,359. Therefore, he could be paid at step 9 of GS-11.
3. His salary then would be set at GS-11 step 9 of the aerospace engineer special rate scale, which is \$59,816.
4. As explained in Chapter 5, the Agency would pay him either this salary or the applicable locality pay for GS-9 step 9, whichever is higher. For example, this salary is higher than the locality rate for GS-9 step 9 at KSC (\$54,414) but is lower than the locality rate at ARC (\$62,228).

If an employee is changed to a lower grade on the same special rate table, calculate the MPR using the underlying GS table to determine the step but using the rates in the special rate table.

Example 3o:

Orlando is a GS-12 step 2 aerospace engineer (\$59,050) changing to a GS-11 aerospace engineer position. On the aerospace engineer special rate table \$50,085 falls between GS-11 step 5 \$58,509 and step 6, \$60,049, so his salary will be set at step 6, \$60,049 and then compared with the applicable locality rate as explained in chapter 5 to determine what he will actually be paid.

Different Special Rate Schedule

If an employee is changed to a lower grade and moves from one special rate table to another and both tables have special rate ranges for the higher grade, use the underlying GS table to determine the maximum payable rate in the lower grade and then set pay using the rate on the SSR table.

Example 3p:

Ellen is moving from a GS-11 step 2 electronics engineer position (table 422: \$55,429) to a GS-9 aerospace engineer position (table 414).

1. Find Ellen's current salary on underlying GS table (GS-11 step 2 on this scale is \$47,729).
2. \$47,729 falls between step 8 and 9 on the GS table. So set pay at step 9
3. GS-9, step 9 on table 422 is \$59,816

If she were working in San Francisco, she would be paid from the locality pay table, which is \$62,228, because the locality rate is higher than the special rate. However, if she were working in KSC, she would be paid the special rate of \$59,816 because the locality rate for GS-9 step 9 (\$54,414) is lower than the special rate.

Special Rate to Different Special Rate-No Rate at Current Grade

If an employee is changed to a lower grade from one special rate table to another but the new special rate table is not applicable to the new grade,

use the underlying GS table to determine the maximum payable rate and then set pay on the appropriate locality table.

Example 3q:

George is moving from a GS-12 step 1 medical officer position to a GS-11 aerospace engineer position. Using the underlying GS table, GS-12 step 1 is \$55,360. This falls between steps 6 & 7 at the GS-11 level. Set pay at the GS-11, step 7 level. GS-11, step 7 on table 414 is \$61,589. If the employee worked in Houston his pay would be paid from the locality table (GS 11, step 7 is \$70,046) since it exceeds the pay for table 414. For this example, in all cases pay higher paid from the locality tables.

Employees who are changed to a lower grade may be eligible for retained grade or pay (see Chapter 7).

3-7. Using the HPR and MPR to Compute Salaries

3-7-1. Definition of Maximum Payable Rate

The MPR is the highest rate at which an employee's pay can be set when the HPR is used. It may not exceed the top step of the employee's current grade. If the HPR comes out between two steps, the employee may be paid at the higher step, and as explained in section 3-3, it is NASA's policy to pay the higher step.

3-7-2. Computing the MPR

Except as discussed in 3-7-3 below, the following steps are used to calculate the MPR:

- a. Use the underlying general schedule in effect when the employee earned the HPR
- b. On that pay schedule, find the rates for the grade to which the employee is moving.
- c. Find the lowest step that equals or exceeds the HPR or the top step of the grade if the top step is below the HPR.
- d. Remember, as explained above, if the HPR falls between two steps on the grade the employee is moving into, the higher step will be used as the MPR.
- e. Then find the corresponding grade and step on the current pay chart, and that's the employee's salary.

Sometimes, people ask whether it wouldn't be quicker to simply do the comparison on the current pay scale. For example, if an employee was GS-6 step 5 in 1990 and is being reinstated as a GS-5, just look at the current pay scales and figure out where the GS-6 step 5 rate falls on the GS-5 scale. In most cases, this would work but not in all cases. In the 1970s, for example, not all grades received the same percentage increases. Therefore, if you didn't first look at the scales in effect at that time, you would miscalculate the HPR. In addition, if you are using a non-GS pay scale and are comparing it with the GS pay scale, you must use the scales in effect at the time the employee earned the rate.

Example 3r:

Emmett was a GS-6 step 1 in 1981 (\$14,328). He is being reinstated to a GS-4 position. You find that in 1981, GS-4 step 8 was \$14,171, and step 9 was \$14,554. Therefore, his MPR is GS-4 step 9. Using 2006 rates, his MPR will be \$28,527. He can be paid that rate, and he would receive the applicable locality pay percentage (see Chapter 5). Since the use of MPR is optional, a Center could decide to set his salary at a lower step *if one of the exceptions to NASA's policy explained in section 3-3 was applicable.*

Example 3s:

Elaine was a WG employee in 1994 at a rate of \$14.01 per hour. Her equivalent GS rate is obtained by multiplying \$14.01 times 2087, which equals \$29,238.87. She is being reinstated to a GS-6 position in Washington DC. In 1994, the tenth step of GS-6 DCB locality schedule was \$27,696. Therefore, her MPR is GS-6 step 10, which equals \$42,898 in 2006. In this case set pay using the applicable locality tables not the underlying GS base.

Example 3t:

Ray is working for the Post Office. In 2006, he is making \$74,000 per year. He is being hired into a GS-12 position in Washington DC. Step 5 of GS-12 is \$73,720, and step 6 is \$75,887. Therefore, the MPR is GS-12 step 6.

3-7-3. Computing HPR Based on Merit Pay (GM) Rates.

If an employee was on merit pay, figure out the HPR and MPR as follows.

- a. Find the pay scale he or she was on and the grade on that scale he or she is going into.
- b. Find the difference between the bottom and top of the grade.
- c. Subtract the rate for the bottom of the grade from the employee's salary.
- d. Divide c by b to the 7th decimal place truncating, not rounding the last number.
- e. On the current pay scale, find the difference between the bottom and the top of the grade that the employee is moving into.
- f. Multiply d times e, and round the result to the next whole dollar.
- g. Add f to the lowest rate of the grade, and that's the MPR.

Example 3u:

Andy was in a GM-14 merit pay position in 1989. His salary was \$52,592. He resigned and is being reinstated to a GS-13 position in 2000.

- The difference between the bottom and top of GS-13 in 1989 is \$53,460 minus \$41,121 equals \$12,339.
- \$52,592 minus \$41,121 equals \$11,471.
- \$11,471 divided by \$12,339 equals .9296539.
- In 2000, the rate range for GS-13 is \$55,837 to \$72,586.
- \$72,586 minus \$55,837 equals \$16,749.
- .9296539 times \$16,749 equals \$15,770.77, rounding to the next dollar equals \$15,771.
- The first step of GS-13 in 2000 is \$55,837.
- \$55,837 plus \$15,771 equals \$71,408.
- \$71,408 falls between GS-13, step 9 (\$70,725) and step 10 (\$72,586), so the MPR is GS-13, step 10.

Chapter 4

PROMOTIONS

Note: Unless otherwise stated, the rates used in this chapter are for the year 2006.

4-1. Introduction

This chapter covers promotions in the General Schedule. Promotions for the FWS are covered in Chapter 17.

4-2. Authority

- a. Law, rate on change of position or type of appointment: 5 USC 5334b
- b. OPM regulations for determining pay for special rate employees: 5 CFR Part 530 Subpart C
- c. OPM regulations concerning promotions and transfers: 5 CFR 531.203-206, 531.214, and 531.243

4-3. Definition of Promotion

For pay purposes the definition of promotion in the General Schedule is a change from one GS grade to a higher GS grade while continuously employed. Even though an action may not be a promotion under the staffing or personnel processing rules, it still may be a promotion for pay purposes. The following are examples:

- a. An employee on a temporary appointment receives another temporary appointment at a higher grade without a break in service.
- b. An employee on a temporary appointment receives a permanent appointment at a higher grade without a break in service.
- c. An employee transfers to another Agency at a higher grade.
- d. An employee on a permanent appointment receives a new career-conditional appointment at a higher grade from a competitive examination.

All of these will be processed as something other than promotions (for example) conversions and transfers, but they are all promotions for pay purposes requiring the application of the promotion rules described in this chapter.

4-4. The Two-Step Rule

When an employee is promoted *from one GS position to another*, he or she must receive an increase equal to at least two steps of the grade from which he or she is being promoted. If the resulting computation falls between two steps in the higher grade, the employee must receive the higher step. Except for a situation involving special rate employees, which is explained in section 4-5, an employee may not be placed above the top step of the grade to which he or she is being promoted. The two-step promotion rule must be applied using one of the two promotion methods – the standard method or the alternate method. See sections 4-6 and 4-7 to determine which method must be used.

If an employee is at step 10 of the grade, add the two steps to that tenth step and then calculate where the rate falls in the new grade. For grades 1 and 2, use the difference between steps 9 and 10 when figuring out how much to add to step 10. This is important for these grades because the steps for these grades are not uniform as they are for the other grades.

Example 4a (regular rate to regular rate):

Stephanie is at GS-5 step 10 (\$32,755) and is being promoted to GS-6. Each step in GS-5 is \$840.

When she is promoted, she must receive at least \$32,755 plus \$1,680 (\$840 times 2), or \$34,435.

\$34,435 is between GS-6 step 7, \$33,701 and GS-6 step 8, \$34,637, so Stephanie's salary is set at GS-6 step 8, \$34,637.

If an employee is due a within grade increase on the same date as a promotion, the step resulting from the within grade increase is used when applying the two-step rule. (See Chapter 1-7)

Example 4b (promotion with concurrent WIG):

Charles is at GS-4 step 5, and he is due an increase to step 6 on July 16. His agency also intends to promote him to GS-5 on that date. Including the increase to step 6 and then applying the two-step rule, his salary in GS-5 must be at least two steps more than GS-4 step 6. GS-4 step 8 equals \$27,776. \$27,776 falls between GS-5, step 4 (\$27,715) and step 5 (\$28,555), so his salary will be set at GS-5 step 6.

4-5 Geographic Conversion Rule

When an employee's official worksite is changed to a new location upon promotion *where different pay schedules apply**, you must convert the employee to the applicable pay schedule and rate of basic pay for the new official worksite based on the employee's position of record before promotion before applying the two-step promotion rule. Set the employee's rate(s) of basic pay in the applicable pay schedule(s) in the new location based on his or her position of record (including grade) and step (or rate) immediately before the change in the employee's official worksite. The resulting rate must be used as the existing rate in applying the two-step promotion rule.

*In the context of applying the geographic conversion rule, the phrase "where different pay schedules apply" means that an employee's official worksite is changed to a new location that would cause the employee to lose or gain coverage under a location-based pay schedule (i.e., locality rate schedule or special rate schedule) if the employee were to remain in the same position of record.

4-6 Standard Method

Apply the standard method for the *two-step promotion rule* if the employee is covered by the same pay schedules before and after promotion. For example, an employee may be covered by the General Schedule and the same locality rate schedule before and after promotion. The steps for the standard method are as follows – examples are in section 4-12:

Promotion Rule - Standard Method

Step A	If applicable, apply the geographic conversion rule to determine the employee's rate(s) and range(s) of basic pay based on the employee's position of record before promotion and the new official worksite. Also, if applicable, provide any simultaneous within-grade increase or quality step increase. Use the resulting rate(s) of basic pay as the existing rate(s) in effect immediately before promotion in applying steps B and C.
Step B	Identify the employee's existing GS rate (or LEO special base rate) in the grade before promotion, and increase that rate by two GS within-grade (step) increases for that grade.

Step C	Determine the payable (highest) rate of basic pay for the step or rate determined in step B by applying any locality payment or special rate supplement applicable to the given grade, based on the employee's position of record before promotion and official worksite after promotion. (If the rate determined in step B is above the range maximum, use the same locality payment or special rate supplement that applies to rates within the rate range.)
Step D	Identify the highest applicable rate range for the employee's position of record after promotion and find the lowest step rate in that range that equals or exceeds the rate determined in step C. This is the employee's payable rate of basic pay upon promotion. (If the rate identified in step C exceeds the maximum of the rate range identified in this step, the employee's payable rate is that maximum rate, or, if the employee's existing rate is higher than that maximum rate, a retained rate under 5 CFR part 536 equal to that existing rate.)

4-7 Alternate Method

Apply the alternate method for the *two-step promotion rule* if the employee is covered by different pay schedules before and after promotion and if the alternate method will produce a higher payable rate upon promotion than the standard method. For example, an employee may be covered after promotion by a special rate schedule that did not apply to him or her before promotion, and the alternate method will produce a higher rate. Examples of the alternate method are in section 4-12.

Exception: An agency may apply the alternate method for an employee covered by different pay schedules before and after promotion, even though the alternate method produces a lesser payable rate than the standard method, only under the following conditions:

- The agency determines it would be inappropriate to use the standard method based on a finding that the higher pay for the position before promotion is not sufficiently related to the knowledge and skills required for the position after promotion; and
- The agency informs the employee of the determination to use the alternate method before the effective date of the promotion.

Promotion Rule – Alternate Method

Steps A, B, C	Same as steps A, B, and C, of the standard method.
Step D	Identify the highest applicable rate range for the employee's grade after promotion based on consideration of any pay schedule that applied to the employee's position of record <i>before</i> promotion (after any

	geographic conversion). (Do not consider pay schedules that apply only to the employee's new position of record after promotion. For example, if a particular special rate schedule applies only to an employee's position of record after promotion, disregard that schedule in applying this step.) Find the lowest step in the highest applicable rate range that equals or exceeds the rate identified in step C. (If the rate identified in step C exceeds the maximum of the rate range identified in this step, the employee's payable rate is that maximum rate, or, if the employee's existing rate is higher than that maximum rate, a retained rate under 5 CFR part 536 equal to that existing rate.)
Step E	Convert the lowest step rate identified in step D to a corresponding step rate (same step) in the highest applicable rate range for the employee's new position of record <i>after</i> promotion. This is the employee's alternate payable rate of basic pay upon promotion. (If the rate derived under step D was a retained rate, see 5 CFR 531.214(d)(4)(ii) to determine the alternate payable rate.)
Step F	If the alternate payable rate identified in step E exceeds the payable rate resulting from the standard method, the employee is entitled to the alternate rate upon promotion. Otherwise, the employee is entitled to the payable rate derived under the standard method.

4-8 Promotion of Retained Rate Employees

If an employee was receiving a retained rate before promotion, apply the promotion rule as follows:

1. If the employee's existing payable rate of basic pay before promotion is a retained rate, apply the standard method or alternate method, as applicable, as if the employee were receiving the maximum rate of the employee's grade before promotion.
2. If the payable rate of basic pay after promotion determined under paragraph (1) is greater than the employee's existing retained rate, the employee is entitled to that payable rate.
3. If the existing retained rate is greater than the rate determined under paragraph (1), the retained rate must be compared to the highest applicable rate range for the position after promotion, as provided in 5 CFR 536.304. The employee is entitled to the lowest step rate in the range that equals or exceeds the retained rate or, if the retained rate exceeds the range maximum, to the retained rate.

4. If the employee makes a geographic change, then the retained rate applicable to the employee's position at the new location must be determined before steps 2 and 3. Do this by dividing the maximum rate for the position at the new locality by the maximum rate from the old locality. Multiply the current retained rate by the resulting factor. This will provide the retained rate at the new location.

Example: Retained rate, geographic conversion

George is a GS-11 on pay retention, with an official worksite in the RUS locality pay area. His retained rate is \$66,746 and he's moving to a new worksite in the DCB locality pay area. George's grade is not changing and his former and new positions are not covered by a special rate. Determine George's retained rate for his new official worksite.

2005 Locality Table – RUS

	1	2	3	4	5	6	7	8	9	10
GS-11	50,541	52,226	53,910	55,595	57,280	58,965	60,649	62,334	64,019	<u>65,704</u>

2005 Locality Table – DCB

	1	2	3	4	5	6	7	8	9	10
GS-11	52,468	54,217	55,966	57,715	59,464	61,213	62,962	64,711	66,460	<u>68,209</u>

Divide the maximum rate at the new locality by the maximum rate from the old locality.

$$\$68,209 / \$65,704 = 1.0381$$

Multiply George's retained rate by 1.0381

$\$66,746 \times 1.0381 = \$69,289$ which is George's retained rate at his new official worksite.

4-9 Key Terms

"Highest applicable rate range" means the rate range applicable to a GS employee based on a given position of record and official worksite that provides the highest rates of basic pay, excluding any retained rates. For example, a rate range of special rates may exceed an applicable locality rate range. In certain circumstances, the highest applicable rate range may consist of two types of pay rates from different pay schedules-e.g., a range where special rates (based on a fixed dollar supplement) are higher

in the lower portion of the range and locality rates are higher in the higher portion of the range.

"Pay schedule" means a set of rate ranges established for GS employees under a single authority-i.e., the General Schedule, an LEO special base rate schedule (for grades GS-3 through 10), a locality rate schedule based on GS rates, a locality rate schedule based on LEO special base rates (for grades GS-3 through 10), or a special rate schedule. A pay schedule applies to or covers a defined category of employees based on established coverage conditions (e.g., official worksite, occupation). A pay schedule is considered to apply to or cover an employee who meets the established coverage conditions even when a rate under that schedule is not currently payable to the employee because of a higher pay entitlement under another pay schedule.

"Position of record" means an employee's official position (defined by grade, occupational series, employing agency, LEO status, and any other condition that determines coverage under a pay schedule (other than official worksite)), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description, excluding any position to which the employee is temporarily detailed.

"Rate of basic pay" means the rate fixed by law or administrative action for the position held by a GS employee before deductions. A "rate of basic pay" includes a GS rate under 5 U.S.C. 5332, a law enforcement officer special base rate under section 403 of the Federal Employees Pay Comparability Act of 1990, a special rate under 5 U.S.C. 5305, a locality rate under 5 U.S.C. 5304, or a retained rate under 5 U.S.C. 5363. (See section on retained rate employees for more information.)

4-10. Relationship Between the MPR and the Promotion Rule (Two-Step Rule)

When an employee is promoted, he or she must receive the two-step minimum. If the MPR is higher than what results from applying the two-step rule, the salary may be set either using the promotion rule or the MPR. As explained in Chapter 3, NASA's policy is to use the MPR.

Example 4c:

Betty is a GS-13 step 2 (\$68,026), and she accepts a GS-11 step 1 position (\$46,189). There is no geographic change and only the locality table applies. When she is promoted to GS-12, applying the two-step rule, she is entitled to GS-12 step 1 (\$55,360). However, applying the MPR, \$68,026 falls between GS-12 step 7 (\$66,430) and step 8 (\$68,275). Therefore, her salary could be set anywhere between steps 1 and 8 of GS-12, and most of the time in NASA it would be set at step 8. (See Chapter 3 for NASA policy.)

4-11. Windfalls

As explained in Chapter 3, when an employee is changed to a lower grade and then repromoted, there is the possibility of an unintended windfall. Agencies have discretion at the time of the change to the lower grade with respect to applying HPR and MPR rules. Once the salary is set, the two-step rule must be applied when the employee is repromoted. Centers should be aware of this possibility at the time the change to the lower grade takes place.

Example 4d:

Jane is at GS-6 step 1 (\$28,085), and she requests a change to a GS-5 position because it has more promotion potential. If the agency uses the MPR, her salary will be set at GS-5 step 5 (\$28,555). A few months later, when she is promoted back to GS-6, applying the two-step rule, her salary must be set at GS-6 step 4 (\$30,893), which is a significant increase in a short period of time. Of course, the organization may feel that she is bringing sufficient value to the position that the increase is justified.

If when she accepted the GS-5 position, the agency set her salary at GS-5 step 3 (\$26,875), her salary would be set at GS-6 step 2 (\$29,021) when she was repromoted. Thus, she would receive only a slight increase instead of a windfall.

NOTE: Current NASA policy does not define this scenario as an exception to HPR. Contact the Agency Workforce Management and Development Division if you have questions.

Whenever an employee voluntarily accepts a change to a lower grade, Centers should require the employee to sign a statement indicating that he/she understands what the new grade, step, and salary are and that he/she agrees to them. This is particularly important if salary is being set below the MPR.

4-12 PROMOTION EXAMPLES – 2005 Salary Tables

1. Example: GS mandatory promotion rule - Standard Method

December 2006

Sandy, a GS-6 step 7, is being promoted to a GS-7 position. Both positions are in Dayton OH and neither position is covered by a special salary rate.

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-6	27,507	28,424	29,341	30,258	31,175	32,092	33,009	33,926	<u>34,843</u>	35,760

On the 2005 underlying General Schedule, Sandy's rate, increased by two steps, is GS-6 step 9 (\$34,843). Sandy's promotion entitlement is based on the highest applicable rate range that applies to the new position. Her promotion entitlement is the rate for a GS-6 step 9 on the Dayton OH locality table. She is entitled to pay at the lowest rate in the highest applicable rate range that equals or exceeds \$39,324.

2005 Locality - Dayton OH

	1	2	3	4	5	6	7	8	9	10
GS-6	31,044	32,079	33,114	34,149	35,184	36,219	37,254	38,289	<u>39,324</u>	40,359
GS-7	34,498	35,648	36,798	37,948	39,098	<u>40,248</u>	41,398	42,548	43,698	44,848

The highest applicable rate range is the Dayton OH locality table. Sandy's payable rate of basic pay is GS-7 step 6 at \$40,248.

2. Example: Standard Method w/geographic conversion

John, a GS-12 step 7, currently making \$74,460 in the DC locality area is being promoted to a GS-13 position in the San Diego locality pay area. Neither position is covered by a special salary rate. John's promotion entitlement is determined as follows:

First, apply the geographic conversion rule to determine the rates of basic pay for the GS-12 position in the San Diego locality area.

DC 2005 Locality Table

	1	2	3	4	5	6	7	8	9	10
GS-12	62,866	64,981	67,077	69,173	71,269	73,364	<u>74,460</u>	77,556	79,652	81,747

2005 San Diego Locality Area

	1	2	3	4	5	6	7	8	9	10
GS-12	63,807	65,934	68,060	70,187	72,313	74,440	<u>76,566</u>	78,693	80,819	82,946

Now that John's step rate reflects what he would be making if his current position was located in San Diego, his promotion entitlement must be determined from the underlying GS table.

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-12	54,221	56,028	57,835	59,642	61,449	63,256	<u>65,063</u>	66,870	<u>68,677</u>	70,484

On the 2005 underlying General Schedule, John’s rate, increased by two steps, is GS-12, step 9 (\$68,677).

2005 San Diego Locality Area

	1	2	3	4	5	6	7	8	9	10
GS-12	63,807	65,934	68,060	70,187	72,313	74,440	76,566	78,693	<u>80,819</u>	82,946
GS-13	75,878	78,407	<u>80,936</u>	83,465	85,993	88,522	91,051	93,580	96,109	98,638

Crosswalk the resulting step to the highest applicable rate range that applies to the old position at the new location. John’s promotion entitlement (\$80,819) is the corresponding step on the highest applicable rate range that applies to the old position at the new location. He is entitled to the lowest step in the highest applicable rate range for the new position that equals or exceeds \$80,819. The highest applicable rate range for the GS-13 position after promotion is the San Diego locality table. The lowest step in that rate range that equals or exceeds \$80,819 is the GS-13 step 3 (\$80,936). The \$80,936 is John’s new payable rate of basic pay.

3. Example: SSR to SSR - Standard Method

Dennis is a GS-12 step 4, pilot whose position is in the RUS locality. He is being promoted to a GS-13 position in the same locality. Both positions are paid from the special salary rate table 0558. Dennis' promotion entitlement is determined as follows:

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-12	54,221	56,028	57,835	<u>59,642</u>	61,449	<u>63,256</u>	65,063	66,870	68,677	70,484

2005 Special Salary Table 0558

	1	2	3	4	5	6	7	8	9	10
GS-12	70,487	72,836	75,186	77,535	79,884	<u>82,233</u>	84,582	86,931	89,280	91,629
GS-13	<u>83,821</u>	86,615	89,409	92,996	94,996	97,790	100,584	103,377	106,171	108,965

First, using the underlying General Schedule, Dennis' rate, increased by two steps, is GS-12 step 6 (\$63,256). His promotion entitlement is the corresponding step on the highest applicable rate range that applies to the old position (\$82,233). He is entitled to pay at the lowest rate in the highest applicable rate range for the new position that equals or exceeds \$82,233. The highest applicable rate range for the GS-13 position is SSR table 0558. Dennis' payable rate of basic pay is GS-13 step 1, which is \$83,821.

4. Example: SSR to SSR – Standard Method w/locality table as highest applicable rate range

Julie is a GS-11 step 7, IT Specialist (table 999C) in the DC locality area. She is being promoted to the GS-12 position on the same table (table 999C) in the DC locality area. Julie's promotion is determined as follows:

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-11	45,239	46,747	48,255	49,763	51,271	52,779	54,287	55,795	<u>57,303</u>	58,811

First, using the underlying GS pay table, Julie's rate, increased by two steps, is GS-11 step 9, \$57,303.

2005 Special Salary Table 999C

	1	2	3	4	5	6	7	8	9	10
GS-11	54,287	56,096	57,906	59,716	61,525	63,335	65,144	66,954	<u>68,764</u>	70,573
GS-12	62,354	64,432	66,510	68,588	70,666	72,744	74,822	76,901	78,979	81,057

Julie's promotion entitlement is based on the highest applicable rate range that applies to the old position. Her promotion entitlement is GS-11 step 9, \$68,764 on table 999C.

2005 Locality - DCB

	1	2	3	4	5	6	7	8	9	10
GS-11	52,468	54,271	55,966	57,715	59,464	61,213	62,962	64,711	66,460	68,209
GS-12	62,866	64,981	67,077	<u>69,173</u>	71,269	73,364	75,460	77,556	79,652	81,747

The highest applicable rate range for the new position after promotion is the DC locality table. She is entitled to pay at the lowest rate in the

highest applicable rate range that equals or exceeds \$68,764. Julie's payable (highest) rate of basic pay is GS-12 step 4, \$69,173. An employee is not entitled to a special rate if he or she is entitled to a higher rate of basic pay under another authority (e.g., locality rate or retained rate). See 5 CFR 530.303(d).

5. Example: SSR to non-SSR – Standard Method w/geographic conversion

Jim a GS-6 step 2, police officer, \$41,215, covered by SSR table 983T at Fort Monmouth NJ, is promoted to a GS-7 police officer position in Alabama. His new position is not covered by a special rate. Jim's promotion entitlement is calculated as follows:

Apply the geographic conversion rule to determine the rate of basic pay for the GS-6 step 2 position in Alabama. Now that Jim's step reflects what he would have been making if his current position was located in Alabama, his promotion entitlement must be determined from the underlying GS table.

Special Salary Rate Table 983T

	1	2	3	4	5	6	7	8	9	10
GS-6	39,885	<u>41,215</u>	42,544	43,874	45,205	46,533	47,863	49,143	50,522	51,822

RUS Locality Pay Table

GS-6	30,731	<u>31,755</u>	32,780	33,804	34,829	35,853	36,878	37,902	38,927	39,951
------	--------	---------------	--------	--------	--------	--------	--------	--------	--------	--------

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-6	27,507	28,424	29,341	<u>30,258</u>	31,175	32,092	33,009	33,926	34,843	35,760

2005 RUS Locality Table

	1	2	3	4	5	6	7	8	9	10
GS-6	30,731	31,755	32,780	<u>33,804</u>	34,829	35,853	36,878	37,902	38,927	39,951

GS-7	<u>34,149</u>	35,288	36,426	37,565	38,703	39,842	40,980	42,118	43,257	44,395
------	---------------	--------	--------	--------	--------	--------	--------	--------	--------	--------

The payable (highest) rate of basic pay for GS-6 step 4 is the corresponding rate on the RUS locality pay table, \$33,804. The highest applicable rate range for the GS-7 position after promotion is the RUS locality pay table. The lowest step in that rate range that equals or exceeds \$33,804 is GS-7 step 1, \$34,149. This is the employee's new payable rate of basic pay.

6. Example: SSR to SSR from step 10 w/fixed rate supplement

Michael is a GS-4 step 10, Mail and File Clerk whose position is covered by special rate table 0159 (covering clerical employees in Alaska). He is being promoted to a GS-5 on the same table. Michael's promotion entitlement is determined as follows:

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-4	22,056	22,791	23,526	24,261	24,996	25,731	26,466	27,201	27,936	28,671

Using the underlying General Schedule, increase the GS-4, step 10 rate by two within-grade increases ($\$28,671 + \$735 + \$735 = \$30,141$).

2005 Special Salary Table 0159

	1	2	3	4	5	6	7	8	9	10
GS-4	24,261	24,996	25,731	26,466	27,201	27,936	28,671	29,406	30,141	<u>30,876</u>
GS-5	26,323	27,146	27,969	28,792	29,615	30,438	31,261	32,084	<u>32,907</u>	33,730

Apply the special rate supplement applicable to grade GS-4. The special rates from table 0159 are based on fixed dollar supplements. Subtract the GS-4 step 10 underlying General Schedule rate (\$28,671) from the GS-4 step 10 special rate (\$30,876) to find the special rate supplement ($\$30,876 - \$28,671 = \$2,205$). Add the special rate supplement to $\$30,141 + \$2,205 = \$32,346$. The highest applicable rate range for the GS-5 position after promotion is the GS-5 special rate table 0159. The lowest step rate in that range that equals or exceeds \$32,346 is the payable (highest) rate of basic pay upon promotion. In this example, that would be GS-5 step 9, \$32,907.

7. Example: SSR to SSR promotion from step 9 w/percentage supplement

Sue a GS-11 step 9, computer specialist covered by special rate table 999C in the Columbus, Ohio, locality pay area is promoted to grade GS-12 on the same table.

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-11	45,239	46,747	48,255	49,763	51,271	52,779	54,287	55,795	57,303	58,811

Using the underlying General Schedule, increase the GS-11 step 9, rate (\$57,303) by two within-grade increases. The amount of the within-grade increase at grade 11 is \$1,508. Multiply this amount by two ($\$1,508 \times 2 =$

\$3,016) and add the result to the GS-11 step 9 rate. $\$57,303 + \$3,016 = \$60,319$.

2005 Special Salary Table 999C

	1	2	3	4	5	6	7	8	9	10
GS-11	54,287	56,096	57,906	59,716	61,525	63,335	65,144	66,954	68,764	70,573
GS-12	62,354	64,432	66,510	68,588	70,666	<u>72,744</u>	74,822	76,901	78,979	81,057

Determine the payable (highest) rate of basic pay by applying the special rate supplement applicable to grade GS-11. The special rates from table 999C are based on percentage supplements which are listed in the notes section of the SSR table.

The supplement at grade GS-11 is 20 percent. Multiply \$60,319 by the special rate supplement plus one and round to the nearest whole dollar ($\$60,319 \times 1.20 = \$72,383$). \$72,383 is the payable rate.

The highest applicable rate range for the GS-12 position after promotion is the GS-12 special rate table 999C. Sue is entitled to the lowest step rate in that range that equals or exceeds \$72,383 -- GS-12 step 6, \$72,744. This is Sue's payable rate of basic pay upon promotion.

Alternate Method: Apply the alternate method if the employee is covered by different pay schedules before and after promotion, or if the alternate method will produce a higher payable rate upon promotion than the standard method.

1. Apply the geographic conversion rule.
2. Using the underlying GS table, increase the employee's existing GS rate by two within grade increases.
3. Apply the corresponding resulting step rate to the highest applicable rate range for the old position.
4. Set the rate of basic pay at the lowest step in the new position on the highest applicable rate range for the old position that equals or exceeds that amount.
5. Convert the resulting step to the highest applicable rate range that applies to the new position. If the new position is an SSR position, the

highest applicable rate range may be either an SSR rate range or a locality rate range.

8. Example: Non-SSR to SSR, geographic conversion - Alternate Method

Eric is a GS-301-9 step 7 in Atlanta being promoted to a GS-11 IT position in Washington DC. The Atlanta locality table is the highest applicable table for Eric's old position and a special salary table applies to his new position in the DCB locality. Eric's official worksite is changing to a new location so his pay must be set on the applicable pay schedule at the new location, based on his position of record, grade, and step before the change in his official worksite.

2005 Locality - Atlanta

	1	2	3	4	5	6	7	8	9	10
GS-9	42,576	43,995	45,414	46,832	48,251	49,670	<u>51,089</u>	52,508	53,927	55,345

2005 Locality - DCB

	1	2	3	4	5	6	7	8	9	10
GS-9	43,365	44,810	46,255	47,700	49,145	50,590	<u>52,036</u>	53,481	54,926	56,371

Now that Eric's step rate reflects what he would be making if his current position was located in Washington DC, the promotion rule must be administered on the underlying GS table.

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-9	37,390	38,636	39,882	41,128	42,374	43,620	<u>44,866</u>	46,112	<u>47,358</u>	48,604

2005 Locality - DCB

	1	2	3	4	5	6	7	8	9	10
GS-9	43,365	44,810	46,255	47,700	49,145	50,590	52,036	53,481	<u>54,926</u>	56,371
GS-11	52,468	54,217	<u>55,966</u>	57,715	59,464	61,213	62,962	64,711	66,460	68,086

Eric's two-step increase of step 9 from the underlying GS table is applied to the highest applicable table in the new location and results in a rate of \$54,926. He is entitled to the rate from the highest applicable rate range for GS-301-11 position (locality table) in Washington DC that equals or exceeds \$54,926, GS-11 step 3. That step is applied to the special salary rate table that applies to Eric's new position, resulting in a rate of \$57,906.

2005 Special Salary Table 999C

	1	2	3	4	5	6	7	8	9	10
GS-11	54,287	56,096	<u>57,906</u>	59,716	61,525	63,335	65,144	66,954	68,764	70,573

8a. Example: Eric - Standard Method

Eric is a GS-301-9 step 7, in Atlanta being promoted to a GS-11 IT position in Washington DC. The Atlanta locality table is the highest applicable table for Eric's old position and a special salary table applies to his new position in the DCB locality.

Eric's official worksite is changing to a new location, so his pay must be set on the applicable pay schedule at the new location that is based on his position of record, grade and step before the change in his official worksite.

2005 Locality - Atlanta

	1	2	3	4	5	6	7	8	9	10
GS-9	42,576	43,995	45,414	46,832	48,251	49,670	<u>51,089</u>	52,508	53,927	55,345

2005 Locality - DCB

	1	2	3	4	5	6	7	8	9	10
GS-9	43,365	44,810	46,255	47,700	49,145	50,590	<u>52,036</u>	53,481	54,926	56,371

Now that Eric's step rate reflects what he would be making if his current position was located in Washington DC, his promotion entitlement must be determined from the underlying GS table.

2005 General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-9	37,390	38,636	39,882	41,128	42,374	43,620	<u>44,866</u>	46,112	<u>47,358</u>	48,604

2005 Locality - DCB

	1	2	3	4	5	6	7	8	9	10
GS-9	43,365	44,810	46,255	47,700	49,145	50,590	52,036	53,481	<u>54,926</u>	56,371

GS-9 step 9, \$54,926 is Eric's payable (highest) rate of basic pay in Washington DC. Eric is now entitled to a rate of basic pay that equals or exceeds \$54,926 on the highest applicable rate range for the GS-11 IT position.

2005 Special Salary Table 999C

	1	2	3	4	5	6	7	8	9	10
GS-11	54,287	<u>56,096</u>	57,906	59,716	61,525	63,335	65,144	66,954	68,764	70,573

Under the standard method, Eric is entitled to a GS-11 step 2, \$56,096. However, the alternate method provides the greater entitlement (GS-11 step 3, \$57,906) so Eric must be given that entitlement.

Promotion Rule - GM employee

When a former PMRS employee (designated as “GM”) is promoted, GM coverage is terminated. Pay is set using the GS mandatory promotion rule. A GM employee's off-step rate in the grade before promotion is not converted to a GS step rate in applying the promotion rule, but the employee must be placed on a GS step rate in the grade to which promoted.

9. Example: Promotion - GM employee

Karen is a GM-14 in the DCB locality area whose rate of basic pay is \$92,648 and being promoted to GS-15 in the same locality. The value of a step increase at the GS-14 grade level is \$2,540. Add the value of two steps to her GM rate .

pay	\$92,648	existing rate of
increases	+ 5,080	two step
entitlement	\$97,728	minimum

Increase \$97,728 by the applicable locality -- DCB locality (15.98%).
 $\$97,728 \times 1.1598 = \$113,345$

2005 Locality - DCB

	1	2	3	4	5	6	7	8	9	10
GS-15	103,947	107,413	110,878	<u>114,344</u>	117,809	121,274	124,740	128,205	131,671	135,136

On the 2005 DCB locality table, the lowest rate in the GS-15 rate range that equals or exceeds \$113,345 is GS-15 step 4 (\$114,344). Karen's payable (highest) rate of pay is set at GS-15 step 4 and her GM status terminates.

4-13 Promotion Between Pay Systems

When an employee moves from a non-GS position (such as an FWS job) to a GS position, and the move results in an increase in pay (in any amount), the action is a promotion for pay purposes.

When an employee moves from an FWS job or a Postal Service job, to a GS position pay may be set using the GS maximum payable rate (MPR) rules, following the local pay-setting policy. Under the GS MPR rules, the

employee's pay may be set at any rate of the new grade which is lower than, equal to, or greater than, the employee's highest previous rate.

5 CFR 531.221

Chapter 5

LOCALITY PAY

5-1. Introduction

This chapter covers the operation of locality pay including:

- The history of locality pay;
- Why rates are not as high as envisioned by the law;
- Locality pay areas;
- Movements between locality areas;
- Who is covered by locality pay;
- Purposes for which locality pay may be used;
- Purposes for which it may not be used; and
- How locality pay figures into other pay computations.

5-2. Authority

- a. Law, locality pay: 5 USC 5304
- b. Travel Reform Act of 1996: 5 USC 5737
- c. OPM regulations concerning locality pay: 5 CFR 531.601 to 611
- d. Interim regulations issued to implement The Federal Employees Travel Reform Act of 1996 (5 USC 5737) (these regulations were published on May 9, 1997 at 62 FR 25,423 and amended parts 530, 531, 536, and 591).

5-3. Background

FEPCA included locality pay for the General Schedule. Except for special rates, the General Schedule had been a nationwide pay scale. It was felt that it was necessary to take into account differences in labor costs throughout the country, so the Federal government could better compete with the private sector. It is important to note that locality pay was never intended to be tied to a cost of living index. It is tied to the employment cost index, which is concerned with labor costs.

The law provided that over 9 years, the difference between Federal and private sector employment costs should be reduced to 5%. During the first year the difference between the existing gap and the 5% goal was to

be reduced by 20%, and the difference was to be reduced by 10% for each of the following 8 years.

Because of the budget deficit and concerns from both the President and some members of Congress about the reality of the gap between Federal and private sector costs, locality pay increases that began in January 1994, have not even come close to reducing the gap between employment costs. In fact, some statistics show that the gap has widened. It's unlikely that we will see the large increases originally envisioned in the law.

5-4. Coverage

Locality pay applies to all GS (including GM) employees in the 48 continental United States and Washington, DC. It does not apply to Alaska, Hawaii, and other non-foreign areas such as Puerto Rico. Employees in these areas receive non-foreign area cost of living allowances.

The law permits the President to extend locality pay to other groups of employees. In 1994, it was not extended to other groups, but in every year after that, it has been extended to Administrative Law Judges, Boards of Contract Appeals, and the Foreign Service. Agencies with groups of employees unique to them may also request that locality pay be extended to those employees. NASA has not requested that locality pay be extended to NASA Excepted positions because NASA has sufficient flexibility to set pay rates for these employees to take into account any geographic differences by adjusting an employee's basic pay. Locality pay may not be granted to prevailing rate employees because their rates already take into account local labor conditions (see Chapter 17).

The determination for coverage of non-GS employees is made each year. If covered, these employees receive the entire locality pay amount, not just the increase for the next year.

5-5. Locality Pay Caps

GS pay as augmented by locality pay percentages may not exceed Level IV of the executive pay schedule. In 2006, this equals \$143,000. In 2006, the top step of GS-15 is \$118,957, and the highest locality pay percentage is 28.66 in San Francisco. Therefore, the highest locality GS salary would be \$153,050 (\$118,957 times 1.2866), which is above the cap. Therefore, the highest payable rate is \$143,000.

Locality pay may not cause the salaries of employees in other groups to which it has been extended to exceed Level III of the Executive Schedule. In 2006, Level III equals \$152,000.

5-6. Locality Pay Areas

The United States is divided into locality pay areas. These areas correspond to metropolitan statistical areas. A locality pay area may contain more than one metropolitan area. 5 CFR 531.603 lists the locality pay areas, and each year based on a review, locality pay areas may be removed or added. In addition to the metropolitan areas, there is an area called the Rest of the United States (RUS). See OPM's website at <http://www.opm.gov/oca/06tables/locdef.asp> for the current definitions of the locality pay areas. In 2006, the locality percentages ranged from 12.52% in the RUS pay area to 28.66% for the San Francisco pay

5-7. Movements Between Locality Pay Areas

An employee's locality pay is based on the pay area where his or her official duty station is located. It doesn't matter where the employee lives.

If an employee's duty station is changed, the employee is paid the locality pay for the new duty station even if this means less money and even if the action was involuntary.

Example 5a:

Max is a GS-15 step 1 employee at HQ in Washington, DC earning \$107,521. His agency directs his reassignment to KSC. His new salary will be \$102,964 because KSC ((RUS area) has a lower locality pay percentage than Washington, DC It doesn't matter that Max was directed to take this reassignment. Even though there has been a reduction in Max's salary, this is not an adverse action, and Max must accept the salary reduction.

If an employee is temporarily promoted or reassigned to a different locality pay area, the locality pay percentage for that new area applies. When the employee returns to the original area, the locality pay percentage is once again the percentage for that area. Note: We are talking about an action specifically labeled as a temporary reassignment or a promotion, not a detail. Some agencies do not use temporary reassignments. See Example 5e below (detail action).

Example 5b:

Patsy is a GS-11 step 2 employee in Huntsville earning \$54,101. She is given a temporary reassignment (not a detail) to Washington, so during that temporary reassignment her salary will be \$56,082, and when she returns to Atlanta, her salary will return to \$54,101.

In most cases, when an employee is detailed, this will have no affect on his or her locality pay even if the detail is to another location. This is because the employee's position of record does not change. However, there is one exception. The Federal Employees Travel Reform Act of 1996 (5 USC 5737) permits agencies to pay relocation expenses for employees on extended temporary assignments from 6 to 30 months. This is in lieu of paying subsistence expenses for lodging and meals. If the Agency pays the relocation expenses, the employee's duty station is considered to have changed for locality pay purposes.

Example 5c:

Ralph is detailed from Houston to NASA Headquarters in Washington, DC for 9 months. NASA pays Ralph's relocation expenses. Therefore, even though Ralph is on detail, his locality pay percentage for the 9 months will be the Washington/Baltimore locality rate instead of that for Houston. When he returns to Houston, his locality pay percentage will return to the Houston rate. If NASA had not paid his relocation expenses and had paid his per diem expenses, his locality pay percentage would have remained the Houston rate for the 9 months he was in Washington, DC. Centers should process such an action as a temporary reassignment, to highlight the pay implications.

5-8. Uses of Locality Pay

Locality pay is basic pay for retirement (including the thrift savings plan), life insurance, premium pay, the Fair Labor Standards Act, pay advances for new employees, workers compensation, severance pay, and lump sum annual leave payments. It is also used in calculating the dollar amount of recruitment, relocation, and retention bonuses under the Federal rules and for bonuses authorized under NASA's Workforce Flexibility Act rules that meet a critical need as specified in the Workforce Plan **but not for**

bonuses authorized under the NASA rules that do not meet a critical need.

5-9. Pay Administration

The general rule is that pay computations should be done on the underlying basic General Schedule and the appropriate locality pay percentage or special salary rate supplement is then added to the result (when the locality pay schedule is the only schedule that applies to the position). For actions such as promotions within the same locality pay area, it would be all right to work directly from the locality pay scale, but specialists should be cautioned not to fall into this habit for actions involving more than one locality pay area.

Example 5d:

Brenda is a GS-9 step 8 employee at ARC (San Francisco pay area) earning \$60,590. She is being promoted to a GS-11 position in at KSC (RUS). Her salary must first be set on the basic GS schedule. She is entitled to at least a two-step increase under the promotion rules. On the basic General Schedule, GS-9 step 10 equals \$49,632, which falls between GS-11 step 3 (\$49,269) and step 4 (\$50,809). Therefore, her salary is set at GS-11 step 4. On the RUS locality pay scale, GS-11 step 4 equals \$57,170, which is her new salary. Note: her new salary is less than she was earning at ARC, even though she received a promotion. This is because the locality percentage is so much higher at ARC than it is at KSC.

Example 5e:

Rick was a GS-6 step 5 employee in Los Angeles in 1995 when he left the Federal government. He is being reinstated to a GS-4 position in Washington, DC in 2006, and the Agency's policy is to use the HPR and MPR. Using the basic General Schedule for 1995, GS-6 step 5 equals \$23,632, which exceeds GS-4 step 10 (\$21,734). Therefore, his salary is set at GS-4 step 10, which equals \$34,402 on the 2006 Washington, DC locality pay scale. Even though he earned his HPR in Los Angeles, there was no need to refer to the locality pay scale for that city.

5-10. Relation Between Locality Pay and Special Rates

An employee receives the greater of the regular GS rate as augmented by locality pay or augmented by any applicable special rate supplement.

NOTE: If an employee is receiving locality pay because locality pay exceeds a special rate, the employee has no further entitlement to pay under the special rate table applicable to his/her position at that geographical location.

Example 5f:

Mary is a GS-7 step 1 employee on a special rate at LaRC (RUS). GS-7 step 1 on her special rate table is \$37,000. Since GS-7 step 1 on the RUS locality pay scale is \$35,116, she is paid the special rate salary of \$37,000. However, if she had the same special rate in San Francisco, she would be paid the locality pay salary of \$40,160 because it exceeds the special rate salary.

5-11. Computing the Net Annual Increase

Normally it should not be necessary for you to compute locality pay rates from year to year because OPM publishes new pay scales which are available on its web site, (<http://www.opm.gov>). However, it is useful to understand how the pay scales are calculated. New locality pay scales are computed using the following procedures:

1. Increase the basic General Schedule by the amount of the general increase.
2. Multiply the result obtained in 1 by the new locality pay percentage for the particular area.

Example 5g:

In 2, GS-5 step 1 in Atlanta was \$21,961. GS-5 step 1 on the basic General Schedule was \$20,588. To obtain the amount for GS-5 step 1 on the 2000 Atlanta locality pay scale, multiply \$20,588 times 1.038 (reflecting the 3.8% general increase), then multiply the result of that computation times 1.0766 (reflecting the 7.66% locality pay percentage for Atlanta in 2000), equals \$23,007.

Because locality pay increases vary among locality areas, the net increase which employees receive varies depending on their locality pay area. Although the net increase is not used for any particular purpose, OPM includes it when it publishes locality pay tables. You may wish to

include it when explaining to employees how much their pay will increase. The percentage of the net increase can be obtained by following these steps:

1. Subtract the old year's locality salary from the salary in the new year.
2. Divide the result obtained in 1 by the old year's salary.

Example 5h:

Using the rates for Atlanta from the above example:

1. The difference between the 1999 and 2000 salaries for GS-5 step 1 is \$23,007 minus \$21,961 equals \$1,046.
2. \$1,046 divided by \$21,961 equals 4.76%, the net increase between 1999 and 2000 for the Atlanta locality pay area.

Chapter 6

QUALIFICATIONS PAY

6-1 Purpose

Qualifications pay is authorized by the NASA Flexibility Act of 2004, as codified in 5 U.S.C. 9814, and allows NASA to set the pay of employees under the General Schedule at any step within the pay range for the grade of the position when the employee possesses unusually high or unique qualifications and is assigned new duties without a change of position, or is assigned to a new position. This flexibility is used as an incentive when necessary to obtain the skills needed to accomplish the work of the position.

6-2 Definitions

The phrase new duties without a change in position means new duties added to an employee's current position of record, whether or not it results in a promotion, that are directly related to the unusually high or unique qualifications on which a pay-setting decision, made under this section, is based and are sufficiently different from the other duties to require a re-description of the position and assignment of a new position description number.

The phrase unusually high or unique qualifications means a skill-set, competencies, or "know-how" needed to perform the new duties or the duties of a new position and exceed those of other candidates in terms of depth of expertise and/or breadth and depth of experience. Possession of such qualifications may be evidenced by demonstrated ability to apply the competencies at the required proficiency level for the duties of the position.

The approving official is the person to whom the Center Director has delegated authority to set pay.

6-3 Criteria for Approval

Approving officials must consider the following to determine whether an employee possesses unusually high or unique qualifications prior to setting pay under this section:

Considerations	Definition
Essential Skills	Importance of the required skills to accomplishing the organization's mission and goals
Unique or Difficult to Obtain Skills	Availability of quality candidates with the desired skills and experience is limited.
Breadth and Depth of Skills Versus that of Other Employees or Candidates	The employee's skills compared to the skills of other employees or candidates who perform the same or similar work

Approval must be based on written documentation that:

- a. The skills are essential;
- b. The skills are unique or difficult to obtain; and
- c. The breadth and depth of the employee's or candidate's skills exceeds those of other employees or candidates. Evidence on which this is based will be included in the determination.

When a current NASA employee is selected for another position within NASA, and pay is set under this section, the approval must include documentation explaining how the employee's contributions in the new position will exceed those in the former position.

Approving officials must consider whether there are other appropriate pay incentives, such as relocation or redesignation bonuses, that could be used instead of or in conjunction with setting pay under this section (Note: a redesignation bonus can be considered only as an option for a Federal employee transferring to NASA from another agency, not for current NASA employees). The rationale for using or not using other incentives must be documented when pay is set under this section.

6-4 Paysetting

When setting qualifications pay for a GM employee the pay must be set at a rate equal to a step within the employee's grade.

Normally, qualifications pay will be an equivalent increase for the purpose of calculating waiting periods for within grade increases because the employee receives one or more step increases. An exception, however, may involve a GM employee who moves from a rate within the grade to the next step in the grade and the amount of the increase does not meet the definition of equivalent increase.

A new qualifications pay determination must be made in order to continue qualifications pay when an employee moves to another position that is not a successor position before completing the 1 year service requirement.

For this purpose, the phrase successor position means a position in the same organization that continues to include duties of a position and responsibilities directly related to the unusually high or unique qualifications on which the original pay-setting decision, made under this section, was based.

6-5 Positions Covered

Positions classified under the General Schedule requiring skills that are essential to an organization, a project or NASA's mission and goals are covered by this section. This includes the following:

- a. Aerospace Technology (AST) positions;
- b. Professional positions; and
- c. Administrative and Management positions.

.Normally one-grade interval administrative support and technician positions classified under the General Schedule will be excluded from coverage under this section. However, on a case-by-case basis, exceptions may be granted when such a position is essential to the success of the organization, project, or NASA's Mission and goals and using this pay-setting authority is needed to fill the position.

6-6 Positions Excluded

Qualifications pay may not be used to set pay for positions outside of the General Schedule, e.g., SES, Federal Wage System, administratively-determined pay or for a political appointee who holds a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character ("Schedule C position").

6-7 Actions Covered

The qualifications pay provisions may be used in connection with the following categories of personnel actions: position re-descriptions; promotions; transfers; reassignments when new duties are added; changes to lower grade; position changes; time-limited promotions; and conversions to new appointments.

6-8 Prohibited Use

Qualifications pay can not be used to set pay:

- for newly hired employees. Newly hired employees for this purpose are those who at the time of appointment are not currently employed in a federal position,

- as a result of an adverse action due to poor performance or misconduct,
- for actions initiated by the employee solely for his or her benefit, convenience, or personal advantage, or
- to set pay at a rate lower than a rate an employee is otherwise entitled to by law or regulation.

6-9 Service Requirement

If an employee serves for at least one year in the position for which pay was set under this section (or successor position), the pay earned under such position may be used in succeeding actions to set pay e.g., promotions.

In the event that an employee moves to another position (that is not a successor position) prior to serving one year in the qualifications pay position, pay will be constructively determined as if qualifications pay was never authorized before pay may be set in the new position. This includes constructively determining the employee's rate of basic pay with any statutory increases and within-grade increase the employee would have received in the former position if qualifications pay had not been authorized. This constructively adjusted rate of basic pay will be used in applying any pay administration rules to set pay in the new position (e.g., maximum payable rate rule, two-step promotion rule), unless the employee is eligible for a higher rate of pay under other authority. The former qualifications pay rate may not be used to set pay in the new position.

Employees for whom pay is set under this section must be informed of, and sign a memorandum stating they understand, how their pay will be set if they move voluntarily or involuntarily to another position for which pay under this section is not authorized prior to completing the 1 year service requirement.

Chapter 7

GRADE AND PAY RETENTION

Note: Unless otherwise specified, the pay rates used in this chapter are from the 2000 pay schedules.

7-1. Introduction

This chapter explains basic and advanced concepts concerning grade and pay retention. The chapter also discusses the use of grade and pay retention as management tools.

7-2. Authority

- a. Law on grade and pay retention: 5 USC 5361 to 5366
- b. OPM regulations on grade and pay retention: 5 CFR 536
- c. OPM regulations on evaluating qualifications of employees on grade retention: 5 CFR 337.102
- d. NASA policy on special pay and allowance: Chapter 1 of NPG 3530.1A
- e. Law on placement of SES employees: 5 USC 3594
- f. OPM regulations, pay retention for SES employees: 5 CFR 359.705

7-3. Grade Retention

7-3-1. Employee Eligibility

To be eligible for grade retention, an employee must be serving on a permanent appointment and must be coming to a covered pay schedule.

A ***permanent appointment*** means an appointment without time limitation, so employees on temporary and term appointments prior to the change to lower grade are not included. However, a permanent employee ***converted*** to a term or temporary appointment may be eligible for grade retention.

A ***covered pay schedule*** means the General Schedule and the Federal Wage System. Thus, if an employee is coming to a position in one of these pay systems, he or she is eligible for grade retention even if he or she is coming from another system. Exception: Employees coming from SES, SL, and ST positions to a GS or FWS position are not eligible for grade retention. If the employee is coming from a pay schedule which is not

covered to a covered pay schedule, he or she must be an *employee* as defined in 5 CFR 536.103 for grade retention to apply.

7-3-2. Mandatory Uses of Grade Retention

a. Reduction in Force (RIF)

When an employee who is eligible for grade retention is demoted in a RIF, the employee is entitled to grade retention, if he or she has 52 weeks above the grade to which he or she is being demoted. The 52 weeks must be consecutive, but it could have been at any time. The time could have been in more than one position and more than one Agency. It does not have to be at the grade that the employee is retaining.

Example 7a:

Bill was hired as a GS-4 on January 1, 1999, and he was promoted to GS-5 on July 1, 1999. On February 1, 2000, he was demoted to GS-3 by RIF. Since Bill had more than 52 consecutive weeks above GS-3, he is entitled to grade retention, and his retained grade would be GS-5. If the demotion had been to GS-4, Bill would not be entitled to grade retention because he did not have 52 weeks above GS-4.

Example 7b:

Joanne is hired as a GS-9 on January 1, 1995, and she resigned on February 1, 1996. On May 1, 1996, she is reinstated as a GS-7. On September 1, 1996, she accepts a change to a GS-6 position. On November 1, 1996, she is demoted by RIF to GS-5. Because she had 52 consecutive weeks above GS-5, from January 1, 1995 to February 1, 1996, she is entitled to grade retention. Because she is being demoted from a GS-6, her retained grade is GS-6.

It may be necessary to compare grades in different pay systems to determine whether the 52-week requirement has been met. Comparisons are based on representative rates. The representative rate for GS positions is step 4, and the representative rate for FWS positions is step 2. Chapter 8 contains a further discussion of representative rates for other pay systems.

When determining whether the 52-week requirement is met, compare the representative rates only at the time of the demotion. This is important because sometimes the rates for FWS and GS positions change at different times during the year. Because of this, a GS grade might be

higher than a FWS grade at one time, and during another part of the year, the FWS grade would be higher.

Example 7c:

On February 1, 1999, Toni is hired as a WG-5 employee. The representative rate (step 2) for WG-5 in his area is \$10.75 per hour, which equals \$22,435 per year (\$10.75 times 2087 hours).

On March 1, 2000, the representative rate for WG-5 was raised to \$11.30 per hour or \$23,583 per year. On April 1, Toni is promoted to WG-6.

On May 1, 2000, Toni is moved by RIF to GS-5. The representative rate (step 4) for GS-5 during 1999 was \$22,646, and the representative rate for GS-5 in 2000 was \$23,506.

From February 1, 1999 to March 1, 2000, the representative rate for WG-5 was lower than GS-5, but with the raise on March 1, 2000, the representative rate for WG-5 became higher than GS-5. Therefore, on May 1, 2000, the effective date of the RIF, the representative rate for WG-5 was higher than for GS-5. Since Toni occupied the WG-5 position for more than 52 consecutive weeks, the 52-week requirement has been met, and she would be entitled to grade retention at WG-6, the grade she occupied at the time of the RIF. It doesn't matter that the representative rate for WG-5 was lower than for GS-5 for most of the time that she occupied the WG-5.

Grade retention is mandatory if the employee receives a RIF notice offering a lower grade position. Grade retention is also mandatory even if the Agency offers a lower graded position other than the one offered in the specific notice.

Example 7d:

Yogi is a grade 15 and is given a RIF notice offering him a grade 13 position with grade retention. During the notice period the Agency offers him a grade 14 in another directorate. Even though this offer is not part of the RIF process, Yogi is still entitled to grade retention.

b. Classification

When an employee is downgraded to correct a classification error or to implement a new classification standard, he or she is entitled to grade

retention if the position that is being downgraded has been classified for at least 1 continuous year immediately before the downgrade. IN this case, the requirement is 1 calendar year, not 52 weeks. It does not matter how long the employee occupied the position.

Example 7e:

An Agency classified a GS-12 position on February 1, 1999. On October 1, 1999, Abby was promoted into the position. On March 1, 2000, Abby was downgraded to GS-11 because it was determined that the position was improperly classified. Abby is entitled to grade retention because even though she was in the position for less than a year, it had been classified for more than a year.

Keep in mind that when an employee is downgraded to correct a classification error or to implement a new standard, the Agency can take the action without regard to adverse action procedures if the employee will be entitled to grade retention. However, if the employee is not entitled to grade retention because the position has not been classified for a year, the Agency must use adverse action procedures if the employee is otherwise covered by those procedures.

7-3-3. Grade To Be Retained

In most cases the grade to be retained is relatively straightforward even when the employee is moving between GS and FWS positions. It's the grade that the employee occupies when the action is taken. For example, if an employee is moved from an FWS position to a GS position, he or she retains the FWS grade, and if he or she moves from a GS position to an FWS position, he or she retains the GS grade.

Although it is unlikely to occur, if an employee is coming from a schedule that is not covered, you must first determine whether the 52-week requirement is met. First compare representative rates. Once it is determined that the employee is being downgraded and that he or she is entitled to grade retention, the employee retains the grade in the covered pay schedule with the lowest representative rate which equals or exceeds the representative rate of the position from which he or she is coming. If there is no grade in the covered pay schedule with a representative rate that equals or exceeds the representative rate of the employee's former grade, the employee retains the top grade in the pay schedule, (grade 15 if the employee is coming to a GS position).

Note: Computations are done using the basic General Schedule including any locality or special rate supplement or the prevailing rate for FWS employees.

7-3-4. Grade Retention Entitlements

a. Use of the retained grade

When an employee retains a grade, that grade is used for most purposes including pay administration, retirement and life insurance. It is not used in subsequent RIF actions, and it is not used for determining status under the Fair Labor Standards Act. In addition, it is not used to determine whether an employee receives a subsequent demotion for the purpose of terminating grade retention.

Example 7f:

Donna is a GS-12 employee in Alaska who is demoted to a WG position in Seattle. She retains her GS grade. Even though she now occupies a WG position, any entitlements to premium pay will be governed by the rules for GS positions because she is retaining a GS grade. She does not retain the non-foreign area cost of living allowance which employees in Alaska receive, but she will receive the locality pay rate for Seattle.

Example 7g:

Elton is downgraded from GS-13 to GS-11 to correct a classification error, and he retains the grade of GS-13. Six months later, his agency conducts a RIF. Elton will compete as a GS-11.

While on grade retention, Elton voluntarily accepts a GS-12 position. Even though it is lower than his retained grade of GS-13, it is not lower than GS-11, so his grade retention is not terminated. (Note: process this action as a position change.)

b. Changes in pay schedules

If there is a change in the applicable schedule when an employee becomes entitled to grade retention, he/she is placed on the new schedule.

Example 7h:

Anne is a GS-13 on the regular GS pay schedule. She is demoted by RIF to a GS-12 medical officer position with a retained grade of GS-13. For pay purposes, she will remain a GS-13 on the special rate schedule for medical officers. If she were demoted to a GS-12 engineering position, she would retain GS-13 on the regular pay scale because there is no special rate scale for GS-13 engineers (except computer engineers).

When an employee changes pay schedules as described above, he or she is entitled to the greater of the rate of pay immediately before the demotion, the comparable step to the one formerly held, or the step in the new schedule which equals or exceeds the pay immediately before the demotion. If the salary cannot be accommodated on the pay schedule, the employee is paid a salary above the top step, which is designated as step 0. . If a geographic move occurs in conjunction with the demotion, calculate the above on the schedules applicable at the new duty station not the former duty station

Example 7i:

In 2006, Anne is demoted from the regular rate of GS-12 step 4, \$68,519 on the RUS to a GS-11 engineering position on Table 414. She retains the grade of GS-12 on the engineering scale. Since the rate for the new position is less than the rate for the former position, use the pay retention rules to set pay. Her salary is set at step 8 of that scale which is \$70,120 (the lowest rate that equals or exceeds her current rate of \$68,519).

c. Qualifications determinations

When an employee is on retained grade, his or her qualifications for promotion or other staffing actions are evaluated either on the basis of his or her retained grade or on the basis of the actual position that he or she now occupies, whichever is more advantageous. Once the employee is no longer on retained grade, the qualifications for the retained grade period are evaluated on the basis of the position that he or she actually occupied.

Example 7j:

On January 1, 1998, Howard was demoted from a GS-14 personnel specialist position to a GS-12 budget analyst position. He retains the GS-14 grade. On April 1, 1999, he applies for both a GS-15 personnel officer position and a GS-13 budget analyst position. When he is considered for the personnel officer position, the period from January 1, 1998 to April 1, 1999 is credited as GS-14 personnel experience; and when he is considered for the budget analyst position, that same period is credited as GS-12 budget analyst experience. On February 1, 2000, he applies for another GS-15 personnel officer position, but since his two years of grade retention has expired, the period from January 1, 1998 to January 1, 2000 can be credited only as GS-12 budget analyst experience.

7-3-5. Effect of Time-Limited Promotions

A time-limited promotion cannot be the basis for a retained grade.

If an employee on retained grade receives a time-limited promotion, his or her period of grade retention continues concurrently with the time-limited promotion and terminates without regard to the time-limited promotion.

Example 7k:

On January 1, 1999, Don is demoted from GS-11 to GS-9 with a retained grade of GS-11. On January 1, 2000, he receives a time-limited promotion for 2 years to GS-12. His grade retention terminates December 31, 2000, and his time-limited promotion terminates December 31, 2001.

7-3-6. Multiple Demotions

If an employee is on grade retention and receives a second demotion entitling him or her to grade retention, each operates independently of the other. The second period of grade retention begins at the time of the action and runs concurrently with the first period.

Example 7l:

On January 1, 1998, Dana is demoted from GS-15 to GS-13 with a retained grade of GS-15. On February 1, 1999, she is demoted to GS-11. She is entitled to retain the grade of GS-13, but she is still retaining grade 15. She retains grade 15 through December 31, 1999, and she retains grade 13 through January 31, 2001.

7-3-7. Termination of Grade Retention

Grade retention ends after 2 years. Note: This is exactly 2 calendar years and therefore may happen in the middle of a pay period.

Grade retention also terminates if an employee:

- a. Has a break in service of one work day or more;**
- b. Is demoted for personal cause or at his or her own request from the grade actually occupied;**
- c. Is permanently placed in a grade equal to or above the retained grade;**
- d. Declines a reasonable offer of a position at or above the retained grade; or**
- e. Elects in writing to have grade retention terminated.**
- f. Moves to a position not under a covered pay system.**

Later in this chapter, we will discuss optional uses of grade retention. If an Agency has granted optional grade retention to an employee, there is one more condition under which grade retention may be terminated. If an employee fails to enroll in or comply with the Agency's placement program for employees on grade retention, it terminates.

A demotion for personal cause includes both conduct and performance actions, but it does not include situations where a medical condition necessitates the demotion.

A demotion at the employee's request does not include situations where the employee requests a demotion following a management announcement of an action such as a RIF. We will discuss these situations later in this chapter.

If management has developed a special training program such as an upward mobility or apprentice program, an employee who accepts a demotion to enter such a program would not lose grade retention because it's a program initiated by management.

If during grade retention, an employee is placed in a position with a lower representative rate than the representative rate of the retained grade, of course, grade retention continues. This is true even if later the representative rate of the employee's actual position is raised. If the employee subsequently is moved to another position with this higher representative rate, grade retention would terminate.

Example 7m:

Phil is demoted from GS-9 to WG 8 and retains the grade of GS-9. On February 1, 1998, he is promoted to a WG-9 position.

At the time of Phil's demotion and subsequent promotion to WG-9, a WG-9 in Phil's wage area has a lower representative rate than GS-9. But on April 1, there is an increase in the applicable WG schedule, and the representative rate for WG-9 is now higher than that for GS-9. Phil continues on grade retention at GS-9. However, on July 1, Phil is *reassigned to another WG-9 position*. His grade retention now terminates because he has been placed in a position with a higher representative rate than his retained grade of GS-9.

For an offer to be reasonable, it must:

- a. Be at a grade equal to or higher than the retained grade;
- b. Be in writing;
- c. Include the position description;
- d. Explain the consequences of declination;
- e. Explain that the employee may appeal the reasonableness of the offer to OPM;
- f. Have the same or greater tenure as the employee's tenure;
- g. Have a work schedule with at least the same number of hours as the employee's current schedule; and
- h. Be in the same commuting area unless the employee is subject to a mobility agreement.

An employee who loses grade retention because of declination of a reasonable offer can appeal to OPM.

All offers should be in writing, and declinations should be in writing. If an employee refuses to respond, that may be considered to be a declination. The Center should document the employee's failure to respond, and the offer should advise the employee that failure to respond would be considered to be a declination.

Declination of a reasonable offer can also cause an employee to lose eligibility for grade retention even before it begins.

Example 7n:

Doris is a GS-12 who receives a RIF separation notice. Outside of the RIF process, her agency offers her a GS-12 position in another component in the same commuting area. She declines that offer, and a few days later, her RIF notice is amended to offer her a GS-11. She would not be eligible for grade retention because she declined a reasonable offer at her current grade, which is the grade that she would retain.

Example 7o:

Doris receives a RIF separation notice, but this time, she receives an offer of a GS-11 position outside of the RIF process. She declines that offer, and later through the RIF process, she is offered a GS-9. She is entitled to grade retention because even though she declined an offer at a higher grade than the offer she received, it was not at GS-12, the grade that would become her retained grade.

7-3-8. Transfers to Other Agencies

An employee on grade retention who transfers to another Agency is entitled to continue grade retention. As a practical matter, the gaining Agency may advise the employee that it would not be able to offer the position unless he or she waives grade retention. Under a variety of circumstances, an Agency may offer to grant grade retention to an employee from another Agency. This will be discussed later in the chapter when we discuss optional uses of grade retention.

7-4. Pay Retention

7-4-1. Employee Eligibility

Pay retention applies to employees on permanent GS and FWS appointments at the time of the downgrade. If they are coming from other pay schedules, it applies as long as they are going into GS or FWS positions. It doesn't apply to employees coming from organizations that are not agencies as defined in 5 USC 5102. Pay retention may not be given to employees who are demoted for personal cause or at their own request or to employees who are demoted because they failed to complete the probationary period for managers and supervisors.

Be advised that there is more than one authority for pay retention, and the rules vary slightly. For example, employees removed from the Senior Executive Service and placed in GS positions may receive pay retention under 5 USC 3594. 5 USC 3594 covers a variety of situations such as former career employees who after moving from the competitive service to the SES fail to complete the SES probationary period, or SES employees affected by RIF. SES employees who meet one of the conditions set forth in 5 USC 3594 have placement rights in a civil service position, and they receive retained pay at the SES rate which they were earning. Note: SES members placed in a GS or FWS position are not eligible for grade retention.

There may be rare situations where NASA would decide to grant retained pay to an SES employee moving into a GS position under the authority of 5 CFR 536 as opposed to the authority of 5 USC 3594. For example, the employee accepts a GS position after an announcement of a reorganization but before any formal RIF action. In this situation, the employee would be subject to the Level IV cap on pay.

Note: If an employee moving from the SES to a GS position is not given retained pay, the HPR rules described in Chapter 3 would apply.

7-4-2. Actions Covered

Pay retention must be granted to an employee whose pay would be reduced because of:

- a. The end of the 2 year grade retention period;
- b. RIF or reclassification when the employee does not meet the requirements for grade retention, e.g. does not have the required 52 weeks above the grade to which he or she is being demoted or the position has not been classified for a year;
- c. Reduction or elimination of special rates excluding a statutory reduction in rates of pay under the General Schedule or a prevailing rate schedule;
- d. Placement directed by management from a special rate position to a non-special rate or a lower special rate position;
- e. Placement in a different pay schedule; or
- f. Placement in a formal Government-wide employee development, apprentice, or career intern program.
- g. Application of the promotion rule for GS employees when the employees' payable rate of basic pay after promotion exceeds the maximum rate of the highest applicable rate range.

If an employee is moved from a special rate to a non-special or lower special rate position for her personal convenience, she would not be

eligible for pay retention. Essentially, it must be an action directed or influenced by management. Where the placement is not a directed action, the rules for movements between special and non-special rate positions discussed in Chapters 3 and 4 would apply.

Example 7p:

Lorna is a GS-15 step 10 medical officer at Dryden, \$111,245. Management directs her reassignment to a GS-15 step 10 regular rate position, \$100,897. Because the reassignment was directed, she is entitled to retain the pay of \$111,245.

7-4-3. Setting the Pay Rate

When an employee is entitled to pay retention, he or she receives the rate of pay equal to the rate being paid immediately before the action. If this rate falls within the rate range of the new grade, the employee receives the step that equals or exceeds the rate. *In this case, there actually is no entitlement to pay retention, since there would be no reduction in pay.* If the rate exceeds the top step of the grade, the employee receives that rate unless it is more than 150% of the top step of the grade, in which case, the employee only receives 150% of the top step of the grade or level IV of the Executive Schedule whichever is less.

Example 7q:

Kathy was in a GS-11 step 3 position at \$41,790. To correct a classification error, she is being demoted to GS-9. Because the position has not been classified for a year, she is not entitled to grade retention. The *action* entitles her to pay retention. However, because her salary immediately before the demotion falls between GS-9 step 9 (\$41,012) and step 10 (\$42,091), her salary is set at GS-9 step 10. Since there is no reduction in pay, pay retention does not apply.

Example 7r.

Hector is in an uncovered position and is earning \$58,000 per year, and he is being placed in a GS-9 position. He is entitled to pay retention. Because \$58,000 is less than 150% of GS-9 step 10, he is entitled to retain the rate of \$58,000. 150% times \$42,091 equals \$63,137. If Hector had been earning \$65,000, his retained pay would be \$63,137.

7-4-4. Entitlements While on Pay Retention

While on pay retention, employees receive 50% of the combined comparability and locality (or special rate supplement) increases for the top step of their grade. This means that eventually their rate will fall into the range of their grade. When that happens, they are placed at the top step of the grade, and pay retention ends.

If an employee is on pay retention and there is another action that would entitle him or her to pay retention, the original entitlement is not affected; there is no pay retention resulting from the second action.

Example 7s:

Bart is reduced from grade 13 step 10 to GS-12. He is entitled to pay retention, so he retains the salary of \$72,586. A few months later, he is demoted to GS-5. He retains the pay of \$72,586 even though 150% of GS-5 step 10 is only \$41,667. If Bart had not been on pay retention when he was demoted from GS-12 to 5, he could have only retained the pay of \$41,667 (150% of GS-5 step 10).

7-4-5. Termination of Pay Retention

Pay retention ceases to apply to any employee who:

- a. Has a break in service of one work day or more;
- b. Is demoted for personal cause or at his or her own request;
- c. Becomes entitled to a rate of basic pay which is equal to or greater than the retained rate;
- d. Declines a reasonable offer to a position with a rate equal to or greater than the retained rate.
- e. Moves to a position not under a covered pay system.

For a further discussion of these conditions, see the discussion in section 7-3-7 concerning the termination of grade retention.

Pay retention is terminated whenever the employee is placed in a position with a rate equal to or higher than the retained rate. This is true even if the placement involves a move to a lower grade.

Example 7t:

Carla is retaining pay of \$26,000. She is in a wage grade position with a representative rate of \$11.40 per hour. She is moved into a GS-5 position. The representative rate for GS-5 is \$11.26 per hour, (\$23,506 divided by 2087) so it is a lower grade position. However, \$26,000 falls between steps 7 (\$25,642) and 8 (\$26,354). Pay retention ends. Carla is placed at step 8 of GS-5.

An employee's eligibility for pay retention can be terminated at the beginning of the process if the employee declines a position with equal or higher pay than the employee's current position even if it's at a lower grade.

Example 7u:

Whitey is a GS-12 employee, but he has only been in the Government for 6 months, so he is not eligible for grade retention. He receives a RIF separation notice. Outside of the RIF process, he receives an offer of a GS-11 position at a step that exceeds his current salary. He declines the offer. Later he receives a RIF offer of GS-9. He may not be given pay retention because he already declined a reasonable offer with a pay rate that is equal to or exceeds his current rate of pay.

Unlike grade retention, an employee cannot waive pay retention if it is offered under one of the mandatory provisions. However, if an employee waives grade retention, he or she can waive pay retention at the same time, and this is permitted.

7-5. Grade and Pay Retention as Management Tools

7-5-1. Optional Uses of Grade Retention

Agencies have the option of granting grade retention after a reorganization or reclassification has been announced in writing. This is true even if the employee has not received a specific notice, although the action must have the potential to affect the employee adversely. To be eligible, the employee must meet the 52-week requirement of being in a grade above the grade to which he or she is being demoted. The 52-week requirement applies both for reorganizations and reclassifications when the Agency is making optional use of grade retention.

Once the announcement of the reorganization or reclassification is issued, either the Agency may offer the lower graded position or the employee may initiate the request.

The offer of grade retention must be in writing. The offer should explain what grade retention is and that it only lasts for 2 years. It also should explain that the retained grade will not be used in subsequent RIF's. The employee should sign a statement indicating that he or she understands that the acceptance of the position is voluntary and that he or she understands the benefits and limitations of grade retention. Centers should be very careful to ensure that employees understand what their rights would be if a RIF occurs so that employees cannot later claim that they were placed in a position in violation of RIF rights.

7-5-2. Optional Uses of Pay Retention

Centers have wide latitude to make optional use of pay retention. Examples of situations where Centers may wish to grant pay retention include:

- a. Movement into Agency training programs;
- b. Placement of an employee who has become disabled for his or her position;
- c. Placement of surplus employees; or
- d. Placement of employees in a lower paying position in their commuting area if they decline a reassignment or transfer of function to another commuting area.

Agencies have the discretion of offering grade or pay retention to employees coming from other agencies. This is strictly at the gaining Center's option. For NASA to be able to offer grade retention, the employee must either have a specific RIF notice or a written announcement of a pending reorganization or reclassification. NASA may offer pay retention if an employee in the losing agency is facing an action that would cause his or her pay to be reduced.

7-5-3. Geographic Conversion Rule

If an employee's official worksite changes in conjunction with an action that may entitle the employee to pay retention, you must first apply the geographic conversion rule discussion in Chapter 4, Promotions before determining the entitlement to retained pay.

Chapter 8

MOVEMENT BETWEEN PAY SYSTEMS

8-1. Introduction

This chapter explains the factors to be considered when employees are moving between pay systems. The emphasis is on movements into the General Schedule. Movements into the Federal Wage System will be covered in Chapter 17.

It is not possible to discuss the specifics of every different pay system, but the chapter will help you to know what factors to consider when you are confronted with a different pay system.

8-2. Authority

- a. Law covering General Schedule: 5 USC Chapter 51:
- b. Law, Rate on change of position or type of appointment: 5 USC 5334
- c. Law, Miscellaneous pay provisions: 5 USC 5371 to 5379
- d. OPM Regulations, Pay under other systems: 5 CFR 534

8-3. The General Rule

While it's not spelled out anywhere, the general rule of thumb is that when an employee is moving between pay systems, you use the rules of the system the employee is moving into. For example, if an employee is moving into the General Schedule, you follow the GS rules. If an employee is moving into the FWS, you use the rules for that system.

8-4. Understanding Other Pay Systems

8-4-1. Authority

Pay systems can be established outside the General Schedule or the Federal Wage System but still be under provisions of Title 5 of the United States Code (5 USC). For example, the pay system established for senior level positions is outside the General Schedule, but it is still part of Title 5. This is important because it means that some aspects of the system are still governed by Title 5.

Other systems are established totally outside of Title 5, such as the Foreign Service pay system in Title 22, the Department of Veterans Affairs system for health personnel in Title 38, the Postal Service system in Title

39, and the system for NASA Excepted positions in Title 42 (The Space Act).

Sometimes Title 5 will authorize agencies to use certain aspects of other pay systems. For example, 5 USC 5371 authorizes the Department of Health and Human Services, the Defense Department, and the Bureau of Prisons to use certain aspects of Title 38. Employees remain under the General Schedule, but they can have their salaries augmented with some of the special pay authorized under Title 38.

8-4-2. Structure of Pay Systems

Pay systems can either be graded such as the General Schedule or the Federal Wage System, or they can be ungraded. When a system is ungraded, salaries usually can be set at any rate within a broad range.

8-4-3. Determining Representative Rates

As discussed in Chapter 7, the representative rate for the General Schedule is step 4 of the grade, and the representative rate for FWS positions is step 2.

For the purpose of comparing grades or levels of work in making reasonable offer determinations when one of the grades or levels of work is not under a covered pay system (e.g., GS, Special Rate, Prevailing Rate) use the following rates to make the comparison:

(NOTE: apply the geographic conversion rules under §536.105(b) for positions with different official worksites before making the grade level determinations)

- (i) The maximum payable rate of basic pay that applies to the grade of a position covered by the General Schedule;
- (ii) The maximum payable rate of basic pay that applies to the grade of a position under a regular prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV, or in the case of a prevailing rate position with a single rate, the single rate of basic pay for that position; and
- (iii) The maximum payable rate of basic pay that applies to the grade or level of work in the case of a position not covered by paragraph (i) or (ii) above. In the case of a position with a single rate under such a schedule, the single rate of basic pay for that position is the representative rate.

Some systems are established in the same pattern as the General Schedule. They may be designated as GG. When you see the GG designation, this means that the Agency has separate authority to establish a pay system but has chosen to establish a system parallel to the

General Schedule. However, be careful because the Agency may have instituted variations, which are not immediately obvious. They have the authority to do this, and these variations could affect how you set pay when the employee moves out of that system.

8-4-4. Understanding a System's Structure

Like the General Schedule, other systems have various components. There is the component that is considered basic pay for most purposes, and then there may be other payments that cannot be used for certain purposes. For example, a GS employee receiving a retention allowance may not have that allowance considered as basic pay for any purposes. Therefore, it would be improper to consider the retention allowance when setting the GS employee's pay in another system.

The Department of Veterans Affairs pay system has a basic pay component, and then it has various additions, some which are considered basic pay. However, other additions may not be considered to be basic pay. The Agency that administers the pay system can provide information concerning which components of an employee's pay are considered basic pay and which are not. Generally when setting salary, you should not consider those elements which are not considered to be part of basic pay.

Some pay systems may have a system comparable to locality pay, and if that is the case, then that locality pay should be considered as a part of the employee's rate of basic pay when setting the pay in the General Schedule.

8-4-5. Demonstration Projects

Many agencies have been given authority to conduct demonstration projects, which have their own unique rules. Most projects have established policies and procedures for employees who leave the project's pay system. If an employee is coming to a Center from a demonstration project, the best advice is to contact the Agency conducting the project to obtain information concerning any special pay setting requirements.

8-5. Setting The Pay

For purposes of this chapter, we will focus on movements into the General Schedule from a paybanding system such as the Department of Defense's National Security Personnel System (NSPS) or the Department of Homeland Security's MAX HR. When setting pay in the General Schedule from one of these or other similar systems, first determine the employee's HPR. If the HPR was earned in the paybanding system, determine the rate

of basic pay (includes locality or market supplement). Set pay in the General Schedule using the HPR procedures discussed in Chapter 3. Refer to Chapters 3 and 7 for further information on these topics. Remember that retained grade must be determined on the basis of representative rates. Also, retained grade and pay may not be granted if the employee is coming from an organization that is not an Agency under 5 USC 5102. Thus, for example, retained grade or pay may not be granted to an employee who is coming from the Postal Service because the postal Service is not an Agency as defined in 5 USC 5102.

If grade or pay retention cannot be granted, HPR may still be available. For example a salary earned in the Postal Service may be used as the HPR even though the Postal Service is not an Agency for purposes of grade and pay retention.

If it is determined that neither HPR nor retained grade and pay apply, the employee's salary will probably have to be set at the first step of the grade.

8-6. Promotions

The two-step rule for GS promotions discussed in Chapter 4 applies only to promotions within the General Schedule. It does not apply to promotions from other Title 5 pay systems into the General Schedule. For example, the Supreme Court ruled in *United States V. Clark* that FWS employees moving into the General Schedule were not entitled to a two-step increase in their salaries. Their pay may be set under the HPR.

8-7. Reduction in Force (RIF)

If you find yourself conducting a RIF in a competitive area which has more than one pay system, you must determine the representative rate for each system. In a RIF, an employee has no rights to move to a position with a higher representative rate than his or her current representative rate. For RIF purposes this would be a promotion, and promotions are not permitted in a RIF. If there is any question about what the representative rate is for a particular pay schedule, contact the Office of Human Capital Management for assistance.

8-8. Documenting Movements Between Pay Systems

Because of the different entitlements under various pay systems, Centers should carefully document all movements between pay systems. Employees should be given a letter explaining what their new salary will be and any changes in the conditions under the new pay system, for example, different intervals of time for within grade increases.

Chapter 9

MOVEMENT FROM GM TO GS

9-1. Introduction

This chapter discusses the termination of the Performance Management and Recognition System (PMRS) and how it affects pay setting for current employees. The chapter explains how to set pay for employees who are labeled as GM, how to determine when the GM designation should be removed and how to set pay when an employee moves from GM to GS.

9-2. Authority

- a. The Performance Management and Recognition System Termination Act of 1993 (Public Law 103-89) Note: This law was never codified into Title 5 of the United States Code.
- b. Interim regulations issued December 15, 1993, (58 FR 65,531) to be effective November 1, 1993: These regulations eliminated part 540 of the CFR and changed other parts of the regulations including 530, 531, and 536 to conform to the termination of the PMRS.

9-3. Background

The Civil Service Reform Act of 1978 established the merit pay system for supervisors and management officials at grades 13 to 15. The merit pay system later became the PMRS. Effective November 1, 1993, the PMRS was terminated, and all employees in it reverted to the General Schedule.

If all employees in fact reverted to the General Schedule, the logical question is why did the GM designation remain? Even though technically former PMRS employees became GS employees, their salaries were not changed to the ten steps of the grades. Their salaries remained as they were at dollar amounts ranging from the bottom to the top of their grades. In fact, a small number of PMRS employees who had performed below fully satisfactory had salaries below the first step of their grades. To avoid massive systems problems, it was determined that the most practical approach was to continue former PMRS employees on the GM designation. However, this does not alter the fact that they are actually General Schedule employees.

9-4. Pay setting for GM Employees

9-4-1. General Rule

December 2006

In most situations, GM employees have their pay set just like GS employees, but as explained above, you must often use the actual dollar amounts because they are not at the ten steps of their grades.

9-4-2. Within Grade Increases (WIG's)

A GM employee whose salary is below the 4th step of the grade has a 52-week waiting period. A GM employee whose salary is below the 7th step has a 104-week waiting period, and employees with salaries at or above the 7th step have a 156-week waiting period. This is true even if the salary is only one dollar below the 4th or 7th step.

Example 9a:

In 2000, Sean is a GM-13 employee earning \$61,419. Because the 4th step of the grade is \$61,420, his waiting period for his within grade increase will be 52 weeks. Each step of the grade is \$1,861, so when he receives his increase, his new salary will be \$61,419 plus \$1861 equals \$63,280, which is just below step 5.

9-4-3. Annual Pay Raises

When determining the new salary for a GM employee after an annual pay raise, the following rules are used. In most cases, the payroll system will determine the new salaries automatically, but it is important to understand the process if employees have questions.

- a. For employees at the minimum or maximum rates of the grade, set their salaries at the new minimum and maximum rates.
- b. For employees with salaries below the first step of the grade, multiply their salary by the percentage of the pay increase.
- c. For all other employees, use the following procedure, which is similar to the procedure described in Chapter 3 to determine the HPR and MPR for former GM employees. In most cases, multiplying the old salary by the percentage of the pay increase will yield the same result, but there may be some cases when it will be off by a dollar or 2.
 - (1) Subtract the minimum salary of the grade from the employee's salary in effect before the pay increase.
 - (2) Subtract the minimum rate for the grade from the maximum rate for the grade in effect immediately before the pay increase.

- (3) Divide (1) by (2) and carry the answer to the 7th decimal place, truncating not rounding off.
- (4) Subtract the minimum rate from the maximum rate of the grade following the pay increase.
- (5) Multiply (3) by (4) and round to the next whole dollar.
- (6) Add (5) to the minimum rate for the grade following the pay increase, which will be the new salary.

Example 9b:

Tanya hadn't been performing too well, so her salary was far below the first step of her grade when PMRS terminated. In 1999, her GM-13 salary was \$50,000, which was below the first step of \$53,793. Her 2000 salary will be \$50,000 times 1.038 (reflecting the 3.8% pay increase) equals \$51,900. The first step of the grade in 2000 is \$55,837.

Example 9c:

In 1999, Frank's GM-13 salary was \$54,794. The rate range for the grade was \$53,793 to \$69,930. The difference between Frank's salary and the minimum rate for the grade is \$54,794 minus \$53,793 equals \$1,001. The difference between the maximum and minimum rates of the grade is \$69,930 minus \$53,793 equals \$16,137. \$1,001 divided by \$16,137 equals .0620313. In 2000, the rate range for the grade is from \$55,837 to \$72,586. The difference between the minimum and maximum rates is \$72,586 minus \$55,837 equals \$16,749. \$16,749 times .0620313 equals \$1038.96 rounded to the next dollar is \$1,039. Frank's salary will be \$55,837 plus \$1,039 equals \$56,876.

9-5. Movement from GM to GS

A GM employee will keep his or her GM designation if there are no personnel actions. Also, if he or she is reassigned to another GS position which is a supervisor or management official as defined in 5 USC 7103(a)(10) and (11), he or she keeps the GM designation. Remember, the definition referred to here is the labor relations definition for supervisors and management officials. This is different from the classification definition. For this reason, Center labor relations staffs should be consulted when determining whether a position meets the definition.

A GM employee loses the GM designation if he or she transfers to another Agency, is promoted, is changed to a lower grade, is reassigned to a GS

position which is not a supervisor or management official, or has a break in service of more than 3 calendar days. Even if an employee only has a temporary promotion, the GM designation is gone for good. A detail has no effect on the GM designation.

9-6. Pay Setting When Moving from GM to GS

If an employee is reassigned from a GM position to a GS position, which is not a supervisor or management official, the employee's salary remains the same if it equals one of the steps of the grade. Otherwise, it is moved to the next higher step. The same would apply if the employee transfers to another Agency. If a GM employee is changed to a lower grade, apply HPR and MPR rules. Of course, the salary must be set at one of the steps of the new grade. If a GM employee is promoted to a GS position, apply the GS promotion rules explained in Chapter 4. Add two steps to the employee's current salary, and if the result falls between two steps of the higher grade, set the employee's salary at the higher step.

Example 9d:

Loretta is a GM-14 employee earning \$75,000. She is promoted to GS-15. Each step of grade 14 is \$2,199. Her GS-15 salary must be at least \$75,000 plus \$2,199 times 2 equals \$79,398. \$79,398 falls between GS-15 step 1, \$77,614 and step 2, \$80,201, so her salary is set at GS-15 step 2.

Chapter 10

LAW ENFORCEMENT OFFICERS

10-1. Introduction

This chapter explains:

- The definition of law enforcement officer (LEO) for pay purposes;
- How this definition relates to the retirement definition;
- Special law enforcement rates established by section 403 of FEPCA and how they relate to special rates established under 5 USC 5305;
- Using special rates, special adjustment factors and locality pay when determining pay rates;
- Overtime rates; and
- Limits on premium pay;

10-2. Authority

- a. Sections 403 and 404 of the Federal Employees Pay Comparability Act (FEPCA)
- b. Law, premium pay for law enforcement officers: 5 USC 5541, and 5542
- c. Law, retirement definitions for law enforcement officers: 5 USC 8331, and 8401

10-3. Definition of Law Enforcement Officer for Pay Purposes

The information in this chapter deals with law enforcement officers who are covered by chapter 51 of Title 5 of the United States Code. Generally this means GS or SES employees. The pay definition for law enforcement officers is contained in 5 USC 5541, and 5 CFR 550.103. The definition is tied to the retirement definition for law enforcement officers contained in 5 USC 8331 for CSRS employees and 5 USC 8401 for FERS employees.

Law enforcement officers who meet the definitions in 5 USC 8331 or 8401 respectively receive enhanced retirement benefits. They can retire early, and their annuity is computed under a more generous formula. Formerly only OPM could approve law enforcement officers for coverage under the special retirement provisions, but now agencies have this authority.

The determination of whether an individual is a law enforcement officer is based on the duties of the position which the employee occupies. Generally the duties of a primary law enforcement officer position must be

concerned with the investigation, apprehension, or detention of persons suspected of or convicted of crimes against the laws of the United States. There are some subtle differences between the CSRS and FERS definitions, but they aren't relevant for pay purposes. If an employee's position meets the definition of a primary law enforcement officer, the employee will be given law enforcement officer retirement coverage and will be a law enforcement officer for pay purposes.

There are secondary law enforcement officer positions. These are supervisory or administrative law enforcement positions. If a CSRS primary law enforcement officer transfers to a secondary position, law enforcement retirement coverage continues for that employee. A FERS employee must have at least 3 years in a primary position before transferring to be able to continue retirement coverage. Employees who meet these requirements continue to be law enforcement officers for pay purposes.

Some employees are in secondary law enforcement positions, but because they did not transfer from primary positions or for FERS employees did not have 3 years in a primary position before they transferred, they do not have law enforcement retirement coverage. However, they are considered to be law enforcement officers for pay purposes.

Example 10a.

Danny was hired into his first Federal position as a supervisory police officer. It has been determined that police officers in his agency are primary law enforcement officer positions and that the supervisory position is a secondary position. Danny will not receive law enforcement retirement coverage because he did not move into the secondary position from a primary Federal position. However, he will be a law enforcement officer for pay purposes.

Finally, there are some employees who may not be covered by CSRS or FERS but who are performing law enforcement duties. If OPM determines that the duties of these employees' positions are in fact law enforcement duties, the employees would be law enforcement officers for pay purposes. They, of course, would not be law enforcement officers for retirement purposes. NASA probably does not have any of these individuals.

10-4. Special Rates Established Under Section 403 of FEPCA

Section 403 of FEPCA established special rate scales for law enforcement officers at GS-3 to 10. These rates are separate from any rates established under 5 USC 5305. OPM does not conduct an annual review of these special rates, and they are raised each year by the amount of the annual pay increase for the General Schedule. In 2006, the increase for the General Schedule was 2.1%, so these rates were increased by that amount. OPM publishes law enforcement pay tables, so you don't actually have to do the computations (see <http://www.opm.gov/oca/06tables/indexLEO.asp>). The law enforcement rates for grades from 1 to 15 for all the locality areas can be found on OPM's website.

10-5. Determining Pay Rates

A law enforcement officer at grades GS-3 to 10 is paid the greater of:

- a. The special rate established under section 403 of FEPCA plus locality pay or
- b. A special rate established under 5 USC 5305,

Law enforcement officers at grades other than GS-3 to 10 earn the greater of:

- a. The basic GS rate plus any applicable locality pay rate; or
- b. A special rate established under 5 USC 5305;

10-6. Overtime Rates

For law enforcement employees whose rate of basic pay does not exceed the rate for GS-10 step 1, the overtime rate is 1.5 times the hourly rate. The rate used includes any applicable special rate and a special law enforcement adjustment, or a locality rate whichever is applicable. For an employee whose rate of pay exceeds GS-10 step 1, the overtime rate is the greater of 1.5 times the rate for GS-10 step 1 or the actual rate for the employee's grade and step. These rates include applicable special rates, special law enforcement adjustment factors, or locality rates as applicable. Note the rules for law enforcement officers are no longer different than the rules for other employees.

Example 10b.

Sally is a GS-13 step 1 law enforcement officer in Los Angeles earning \$64,771 per year. Her hourly rate of pay is \$31.04 (\$64,771 divided by 2,087). The annual salary rate for GS-10 step 1-law enforcement officers in Los Angeles is \$42,743, and the hourly rate is \$42,743 divided by 2,087 equals \$20.48. 1.5 times \$20.48 equals \$30.72, which is less than Sally's hourly rate. Therefore, Sally's overtime rate will be \$31.04 per hour.

10-7. Limits on Premium Pay

In any pay period, a law enforcement officer's salary plus premium pay may not exceed the lesser of 150% of the rate for the maximum step of grade 15 or the rate for level V of the Executive Schedule. When calculating the rate for GS-15, include locality pay.

OPM publishes information on the maximum rates each year (see <http://www.opm.gov/oca/pay/HTML/06GSCap.asp> for the current rates).

Note: These limits on premium pay do not apply to law enforcement officers covered by the Fair Labor Standards Act.

Chapter 11

AVAILABILITY PAY

11-1. Introduction

This chapter explains what availability pay is, and to whom it applies. It also explains the pay administration aspects of availability pay.

11-2. Authority

- a. Law authorizing availability pay: 5 USC 5545a
- b. OPM Regulations implementing availability pay: 5 CFR 550.181 to 187

11-3. Definition and Coverage

Availability pay is premium pay intended to compensate certain criminal investigators for having to perform unscheduled duty or having to be available to perform unscheduled duty.

Within NASA, availability pay applies only to criminal investigators classified in the 1811 series. It applies to GS employees and other employees who would be classified in the 1811 if they were covered by the General Schedule. Availability pay does not apply to members of the SES.

To be eligible for availability pay, employees must meet the definition of law enforcement officer contained in 5 USC 5541 (see Chapter 10).

11-4. Computation of Availability Pay

Availability pay equals 25% of basic pay, which includes locality pay . Because availability pay is premium pay, it is subject to the maximum limitation on premium pay for law enforcement officers contained in 5 CFR 550.107 and explained in Chapter 10.

11-5. Mandatory Nature of Availability Pay

Availability pay is essentially mandatory. There is a requirement that the employee and the supervisor annually certify that the employee will perform the amount of unscheduled duty required by 5 CFR 550.183. However, the regulations also provide that the Agency must ensure that the employee will be able to perform this amount of unscheduled duty. In

other words, while there must be a certification, the Agency really has no option but to certify.

5 CFR 550.183 requires that the employee must perform an average of 2 hours of unscheduled duty for each work day. Unscheduled duty hours in this context include those hours during which the employee performs work or is determined by the Agency to be available to perform work. Unscheduled duty hours do not include overtime scheduled in advance of the administrative workweek beyond the first 2 hours of scheduled overtime on a day which is part of the employee's basic 40 hour work week.

Example 11a.

Tim is an investigator who has 260 workdays in a year. The agency has determined that he has 500 hours of unscheduled duty. In addition, he is scheduled to work 3 hours of overtime on each of 30 Fridays. Friday is part of his workweek. He is also scheduled to work 5 hours of overtime on each of 10 Saturdays. Saturday is not part of his scheduled workweek. When determining which hours can be counted toward the certification requirement, the Agency may count the first 2 hours of overtime scheduled on the Fridays. The third hour of overtime on each Friday may not be counted. The hours of overtime for Saturday may not be counted because Saturday is not part of Tim's 40-hour workweek. Since the Agency can count 2 hours of overtime scheduled for each of 30 Fridays, it can add 60 hours to the 500 hours of unscheduled duty resulting in a total of 560 hours. Since Tim has 260 workdays, he has an average of more than 2 hours of unscheduled duty hours for each day. $560 \div 260 = 2.15$. Therefore, the Agency could certify that he meets the requirements for availability pay.

To be considered available for work, an employee must be determined by the Agency to be generally and reasonably accessible to perform work. The Agency will place the investigator in availability status by directing that the employee be available during designated periods. A designation of availability status is not scheduling the employee for overtime, and the employee is not entitled to any overtime payment beyond availability pay for unscheduled overtime.

11-6. Opting Out of Availability Pay

Employees may opt out of availability pay for temporary periods if they cannot perform overtime work because of a hardship such as the need to care for a family member. It would be appropriate to permit the employee

to opt out of availability pay if the hardship is likely to continue for a long enough period that the employee would not be able to have an average of 2 hours of unscheduled duty hours per work day for the year. The decision to permit an employee not to work unscheduled duty hours is solely the Agency's to make. If an Agency permits an employee to opt out, the employee must sign a statement stating that he/she understands that he/she will not be receiving availability pay and that the decision to opt out is voluntary. Agencies should be cautious about letting employees opt out for long periods of time and then having them opt back in a few years before retirement, because availability pay will increase the high 3 average salary.

11-7. Elimination of Availability Pay

If the Agency determines that an employee has failed to perform a sufficient number of unscheduled duty hours, it may suspend availability pay. Also, there may be situations where the employee is not able to perform the required number of unscheduled duty hours, e.g., because of medical problems. In these cases the Agency may suspend the availability pay certification. However, any such suspension is an adverse action, and the employee would be entitled to full adverse action procedures. In other words, if the Agency takes availability pay away while the employee remains in the position, it's an adverse action. However, if the Agency reassigns the employee to a position which is not covered by availability pay, in another series, the employee no longer is entitled to availability pay, and this is not an adverse action, see *Martinez V. MSPB*, Court of Appeals for the Federal Circuit, 96-3354, October 15, 1997.

11-8. Uses of Availability Pay

Availability pay is treated as basic pay for:

- a. Advances in pay under 5 USC 5524
- b. Severance pay
- c. Workers compensation
- d. Retirement and thrift savings
- e. Life insurance
- f. Lump sum annual leave payments.

11-9. Relation of Availability Pay to Other Premium Pay

An employee receiving availability pay may not also receive standby pay or administratively uncontrollable overtime. An employee receiving availability pay may not receive additional compensation for unscheduled overtime. (Unscheduled overtime is overtime not scheduled in advance of

the employee's workweek.) With respect to overtime scheduled in advance of the employee's workweek, an employee receiving availability pay may not receive additional overtime compensation for the first 2 hours of overtime occurring on any day containing part of the employee's basic 40-hour workweek.

Example 11b:

Joyce is receiving availability pay. Her basic workweek is Monday through Friday. Prior to the beginning of the week, she is scheduled to work 3 hours of over time on Monday and 4 hours of overtime on Saturday. She will be paid for 1 hour of overtime on Monday because the first 2 hours are covered by availability pay. She will be paid for all 4 hours of overtime on Saturday because Saturday is not part of her 40-hour basic workweek.

11-10. Relation to Fair Labor Standards Act (FLSA)

While covered by availability pay, the employee is exempt from overtime provisions of the Fair Labor Standards Act. If an employee opts out of availability pay or availability pay is suspended or terminated, the Agency would have to determine whether the position is covered by the Fair Labor Standards Act, applying the usual FLSA requirements.

Chapter 12

WITHIN GRADE AND QUALITY STEP INCREASES

12-1. Introduction

This chapter covers within grade increases (WIG's) and quality step increases (QSI's) in the General Schedule. Chapter 17 explains WIG's for the Federal Wage System (FWS), and there are no provisions for QSI's in the FWS.

12-2. Authority

- a. Law authorizing WIG's: 5 USC 5335
- b. Law authorizing QSI's: 5 USC 5336
- c. OPM regulations concerning WIG's: 5 CFR 531.401 to 414
- d. OPM regulations concerning QSI's: 5 CFR 531.501 to 508
- e. Employee Performance and Communication System: NPR 3430.1C

12-4. Within Grade Increases

12-4-1. Summary

Each GS grade is divided into 10 steps, and the difference between each step is 1/9 of the difference between the minimum and the maximum of the rate range for the grade. Thus, the dollar amount of each step is the same. This is true for both regular and special rate ranges (except for tables 999A-F). Note: For grades 1 and 2, the dollar amount of the 10 steps is not equal.

To be awarded a WIG, an employee must: (1) be performing at an acceptable level of competence; (2) complete the required waiting period; and (3) not have received an equivalent increase during the waiting period.

These requirements will be explained further in subsequent sections.

12-4-2. Employee coverage

Employees in the competitive and excepted service who are on regular and special rate scales of GS positions and who are serving on

appointments not limited to 1 year or less may earn WIG's regardless of their tour of duty (full-time, part-time, or intermittent). Employees with GM designations also may earn WIG's as explained in Chapter 9.

Example 12a:

Sue is given a term appointment not to exceed 2 years at GS-5 step 1. After 52 weeks, assuming she is performing at an acceptable level of competence, she is entitled to an increase to step 2.

By contrast, Scot is given a temporary appointment NTE 1 year. At the end of that year, the appointment is renewed for a second year. Even though he is working more than 1 year, he is not eligible for a WIG because his actual appointment is still for 1 year or less.

Employees who are given a time-limited promotion of 1 year or less are not eligible for WIG's in that grade. However, as discussed below and in Chapter 3, the time on the temporary promotion would count toward a step increase when they return to their former grade.

Example 12b:

Derrick has been in GS-11 step 1 for 40 weeks. He is given a temporary promotion to GS-12 NTE 6 months. He is not eligible for any sort of WIG at GS-12. However, when he returns to GS-11 after completing his 6 months on the temporary promotion, he will be placed at step 2 because he completed the final 12 weeks of the waiting period. In addition, the time beyond the 12 weeks will be counted toward the waiting period for step 3.

If an employee's time limited promotion is extended beyond 1 year without him/her returning to the lower grade, he/she is eligible for a WIG in the higher grade.

Example 12c:

Donna is a GS-9 step 1 and is given a time-limited promotion to GS-11 step 1 on July 2, 2000 (NTE 6 months). On December 31, 2000, the promotion is extended NTE December 1, 2001. Because now she is serving on a time limited promotion which totals more than 1 year and was never returned to her former grade, she will be eligible for a WIG on July 1, 2001-52 weeks after the initial promotion. Note this is different than for temporary appointments explained in example 12a. This is because a single temporary appointment may not be extended beyond 1 year while time limited promotions can be extended to any length. If the Agency had returned her to her former position and then given her a second time- limited promotion, she would not be eligible for a WIG.

12-4-3. Acceptable Level of Competence (ALOC) Determination

a. Basic requirement

A WIG must be supported by an ALOC determination. ALOC determinations are based on fully successful or better performance ratings of record. If all other requirements such as the waiting period are met, the WIG may not be delayed or denied.

b. Delaying ALOC determinations

An ALOC determination must be delayed if:

- 1) An employee has not been under a performance plan in his/her current position for NASA's minimum performance period (90 days) and
- 2) Has not received a rating in any position during the last 90 days of the waiting period.

A special rating must be prepared to support the ALOC determination if:

- 1) An employee has been under a performance plan for the minimum period, but
- 2) The performance cycle is not completed and therefore,
- 3) No rating has been issued.

If this situation arises, the specialist responsible for performance management in the Center should be consulted.

Example 12d:

Shane was appointed at GS-9 step 1 on January 2, 2000, but he was not given a performance plan until November 1. Even though he will have completed the 52-week waiting period on December 31, the ALOC determination cannot be made until January 29, 2001, when he has been under the plan for 90 days. At that time a rating must be prepared. If his performance is satisfactory, his WIG will be made retroactive to December 31, the original due date.

Example 12e:

Janet is appointed to a GS-9 step 1 engineering technician position on January 2, 2000. On November 5, 2000, she is reassigned to a GS-9 engineering position; but before she is reassigned, her supervisor from the engineering technician position prepares a performance rating for her. Her WIG can be granted on time because even though she has not been under a performance plan for 90 days in her current engineering position, she received a rating in another position during the final 90 days of her waiting period.

As illustrated in example 12e, if an employee's WIG is delayed, and after the delay, he/she is found to be performing satisfactorily, the WIG is made retroactive to the original due date.

When an employee's WIG is delayed, he/she should be given a notice explaining why it is being delayed, when he/she will be eligible for the WIG, the requirements which have to be met, and that if performance is satisfactory, the WIG will be retroactive to the original due date.

c. Employees reduced in grade for poor performance

If an employee is reduced in grade for poor performance, the WIG determination is made in the new grade after he/she has been under a performance plan for the minimum period (90 days in NASA). If the WIG would have been due before the employee has been under the plan for 90 days, it is delayed as described above and made retroactive if he/she is found to be performing satisfactorily.

Example 12f:

Wilson is reduced for poor performance from GS-12 to GS-11 step 1 on July 30. Since this reduction does not result in an equivalent increase as explained in section 12-4-6, the time at the GS-12 counts toward his next WIG, which is due on September 10, 2000. Even though he is given a performance plan for his new position immediately (July 31), he will not have been under that plan for 90 days on September 10. He will have been under the plan for 90 days after October 29. At that time a rating should be prepared, and if it is satisfactory, his WIG will be effective on September 10, 2000, the original due date.

d. Waiving the ALOC Determination

The ALOC determination is waived and a WIG is granted if an employee has not served under a performance plan for the 90 day minimum period during the final 52 weeks of the waiting period for one of the following reasons:

- 1) Because of absences which are creditable service as explained in section 12-4-5 (these would be absences such as military service or being under workers compensation);
- 2) Because of paid leave such as being on sick leave with a long-term illness;

- 3) Because the employee has been reinstated retroactively under the Back Pay act (see Chapter 18);
- 4) Because the employee has been detailed to another Federal agency or another employer outside the Federal government such as an entity under the Intergovernmental Personnel Act, and no rating was prepared for the service under the detail;
- 5) Because an employee has not had time to demonstrate performance under a plan because he/she has been performing activities of official interest to the Agency but which are not subject to being appraised under the performance regulations (such as serving as a representative for a labor organization); and
- 6) Because the employee is on long-term training.

12-4-4. Waiting Periods and Effective Dates

Waiting periods for WIG's begin with the first Federal appointment or the last equivalent increase as explained in section 12-4-6. Section 12-4-5 describes which Federal service is creditable. Generally a new waiting period begins if there is in a break in service in excess of 52 calendar weeks. The waiting periods for WIG's are as follows:

- 52 weeks for steps 2, 3, and 4;
- 104 weeks for steps 5, 6, and 7;
- 156 weeks for steps 8, 9, and 10.

Chapter 9 explains waiting periods for employees designated as GM.

The waiting periods are the same for full- and part-time employees.

Example 12g:

Darla is appointed to a GS-6 step 1 position on July 16, 2000, and works a part-time schedule of 20 hours per week. She will be due a WIG to step 2 on July 15, 2001 just like full-time employees.

For intermittent employees waiting periods are based on work days as follows:

- 260 work days for steps 2, 3, and 4;
- 520 work days for steps 5, 6, and 7;
- 780 work days for steps 8, 9, and 10.

It does not matter how many hours an intermittent employee works in a day. It still counts as a day. If an intermittent employee is converted to

full- or part-time, the days worked are counted toward completion of the waiting period.

Example 12h:

Madonna was promoted to a GS-5 step 5 intermittent position on January 2, 2001. Between January 2 and July 2, she worked 20 days. On July 2, 2000, she was converted to a full-time position. If not for the 20 days, her WIG to step 6 would be due June 30, 2002, but because she worked 20 days, which equals 4 weeks, her due date is actually June 2, 2002.

WIG's are always effective at the beginning of a pay period, so even if an employee completes the required waiting period in the middle of a pay period, he/she must wait until the next pay period.

Example 12i:

Betty is appointed to a GS-7 step 1 position on July 9, 2000, which is the middle of the pay period. She will complete 52 weeks on July 8, 2001, but because that is also the middle of a pay period, she must wait until July 15, 2001 for her increase to step 2. Even if she had been appointed effective Monday, July 3, as opposed to Sunday, July 2, she would have to wait until July 15.

Once the effective date is reached and the employee has met all the requirements for the WIG, he/she gets the benefits from it even if it was not actually processed because, for example, another action took place on the same date.

Example 12J:

Ingo was a GS-12 step 1 employee and was due a step increase to step 2 on July 16, 2000. He met all the requirements for the increase. On July 16, he accepted a change to a GS-7 step 1 position. If he is repromoted to GS-12, GS-12 step 2 can be used as his HPR, and he can be placed in that step because he met all the requirements for an increase to that step on July 16 and would have received it if not for the simultaneous change to

Here's a quick hint for figuring out WIG due dates. For each 52-week period, the actual date will be one day earlier in the succeeding year except for leap years like 2000 where it will be two days earlier.

Example 12k:

In 1999, a pay period began on January 3. 52 weeks from January 3, 1999 is January 2, 2000. Because 2000 is a leap year, 52 weeks from January 2, 2000 will be December 31, 2001.

12-4-5. Creditable Service

a. General rule

Most civilian service including paid leave is creditable toward meeting a waiting period for a WIG, provided that there has not been a break in service in excess of 52 calendar weeks. Service in nonappropriated fund instrumentalities (NAFI) is not creditable for employees coming to NASA. It is creditable for employees going to the Department of Defense or the Coast Guard from their respective NAFI.

b. Leave without pay

Leave without pay (LWOP) is creditable in the following amounts:

- 2 weeks for going to steps 2, 3, and 4;
- 4 weeks for going to steps 5, 6, and 7;
- 6 weeks for going to steps 8, 9, and 10.

LWOP in excess of those amounts during the waiting period extends the waiting period by the excess amount.

Example 12l:

Carmen receives a WIG to step 6 on July 2, 2000. Her increase would be due on June 30, 2002, but between July 2, 2000, and June 30, 2002, she takes 10 weeks of LWOP. 4 weeks of the LWOP is creditable, so her WIG due date is extended by 6 weeks (10 minus 4). Therefore, her WIG will be due 6 weeks from June 30, which is August 11, 2002.

If an employee takes LWOP while on a part-time tour and then returns to a full-time tour, or vice versa, the number of weeks of LWOP to be charged is calculated based on the tour that he/she occupied when the LWOP was taken.

Example 12m:

Michael begins a 52-week waiting period on July 2, 2000, working on a part-time tour of 20 hours per week. Beginning on July 30, 2000, he takes 80 hours of LWOP and returns to work in a full-time tour on August 27. Even though he only actually took 80 hours of LWOP, he is considered to have taken 4 weeks (80 divided by 20) of LWOP and his waiting period will be extended by 2 weeks (4 minus 2). The fact that he returned to a full-time tour is irrelevant.

If he had begun on a full-time tour and had returned to a part-time tour of 20 hours per week after having taken 160 hours of LWOP, for WIG purposes he would have taken 4 weeks (160 divided by 40), and the waiting period would be extended 2 weeks.

c. Service in other than GS positions

Service in positions other than GS positions is creditable from the date of the employee's last equivalent increase (see section 12-4-6).

d. Service creditable for one increase

If after military service, an employee is reinstated to a civilian position by means other than exercising restoration rights, the military service is creditable for one WIG increase no matter how long it lasts, provided that the employee is reemployed in the Federal government within 52 weeks after leaving the military. The 52 weeks may be extended for up to one year if the employee was hospitalized following the military service.

Example 12n:

On January 3, 1999, Barbara is promoted to GS-5 step 1. 6 weeks later, she leaves her agency and enters the military for 18 months. She does not have restoration rights following her military service, but she locates a GS-5 position with another Federal agency 12 weeks after leaving the military. Normally she would be reinstated at GS-5 step 1. However, because her military service is creditable for a WIG, she is placed at step 2. The time in excess of the 52 weeks is not creditable, and she will have to wait 52 weeks for an increase to step 3.

Service on temporary appointments is creditable for one increase provided that there has not been a break in service in excess of 52 weeks.

Example 12o:

Stephen was given a temporary appointment at GS-7 step 1 on January 3, 1999. He worked under the appointment for 6 months and left the Federal government until January 2, 2000 when he was given another temporary appointment at GS-7 step 1 for 8 months. After this appointment was completed, he has another break in service of 3 months but then was given a permanent appointment at GS-7.

Normally his salary would be set at GS-7 step 1, but since he worked more than 52 weeks under the temporary appointments and had no breaks in service in excess of 52 weeks, his salary would be set at step 2 provided that the necessary ALOC determination is made. If the determination cannot be made, it must be delayed and made retroactively as described in section 12-4-3b. The time under the temporary appointments in excess of 52 weeks is dropped, and he must wait 52 weeks before being eligible for an increase to step 3.

If he had been given a permanent appointment at GS-8, that would have been an equivalent increase as explained in section 12-4-6, and none of the previous service would have been creditable.

e. Service creditable for multiple increases

The following types of service are creditable for multiple step increases:

- 1) Military service when the employee returns through the exercise of restoration rights;
- 2) Time during which the employee is receiving injury compensation under 5 USC chapter 81;
- 3) Temporary employment in another Federal Agency which is covered under the General Schedule;
- 4) An assignment to a nonfederal entity under the Intergovernmental Personnel Act; and
- 5) Service described in 5 USC 8332(b)(5) and (7) (volunteer service in organizations such as the Peace Corps and VISTA and their successor organizations).

With respect to military service, the entire period from when the employee leaves the Federal agency to the time he/she is restored is creditable.

Example 12p:

Bernie is a GS-11 step 1 employee. His waiting period began on January 16, 2000. On March 1, 2000, he leaves the Agency and enters into the military service on March 15, 2000. He serves in the military until November 15, 2003, and returns to NASA exercising his restoration rights on December 1, 2003.

The period between March 1, 2000, and December 1, 2003, is fully creditable for his WIG even though there were brief periods when he was not actually in the military (March 1 to March 15, 2000 and November 15 to December 1, 2003). Because the service is fully creditable, he would have completed his waiting period for step 2 on January 15, 2001, step 3 on January 14, 2002, and step 4 on January 13, 2003. Therefore, when he returns, he will be placed at step 4. In addition, the time from January 13, 2003, to December 1, 2003, will count toward his waiting period for Step 5.

12-4-6. Equivalent Increases

Whenever a GS employee receives an equivalent increase, he/she must begin a new waiting period. An equivalent increase is equal to the difference between the employee's current step in the grade and the next step. In most cases, this is the same for all steps, but for GS-1 and 2, it is different for various steps. For GM employees an equivalent increase equals the amount of a step in the grade.

For FWS employees coming to the General Schedule, an equivalent increase equals the amount of each step in the FWS grade.

Example 12q:

Linda is in a WG-5 position, and on January 30, 2000, she receives a step increase to step 4, which is an equivalent increase and which for purposes of this example is \$10.70 per hour or \$22,331 per year. On June 4, she is moved to a GS-5 position. Since her salary falls between GS-5 step 2 (\$22,082) and step 3 (\$22,794), her salary is step 3. Her last equivalent increase is still the one that she received on January 30 in the FWS position. Therefore, her service from January 30, 2000, is creditable toward her next WIG, and she will be eligible for an increase to step 4 on January 28, 2001.

When an employee is promoted within a pay system, he/she has received an equivalent increase.

For an employee who performs service under a non-GS Federal pay system which is potentially creditable towards a within-grade increase waiting period, an equivalent increase is considered to occur at the time of any of the following personnel actions:

- A promotion to a higher grade or work level (unless the promotion is cancelled and the employee's rate of basic pay is redetermined as if the promotion had not occurred); or
- An opportunity to receive a within-level or within-range increase that results in (or would have resulted in) forward movement in the applicable range of rates of basic pay, where "forward movement in the applicable range" means any kind of increase in the employee's rate of basic pay other than an increase that is directly and exclusively linked to (1) a general structural increase in the employee's basic pay schedule or rate range (including the adjustment of a range minimum or maximum) or (2) the employee's placement under a new basic pay schedule within the same pay system.

A non-GS pay system is one that does not meet the definition of *General Schedule or GS* in 5 CFR 531.403. The personnel actions above **must have occurred** within the same pay system. That is, even if an employee receives an increase in pay moving between pay systems, that "promotion" or other pay increase is not considered an equivalent increase.

If an employee receiving retained pay is promoted and receives little or no increase in pay, he/she still has received an equivalent increase and must begin a new waiting period.

Example 12r:

Jodi is a GS-5 employee receiving retained pay of \$39,178. She is promoted to GS-11 step 1 (\$39,178) on July 16, 2000. Even though she is receiving no pay increase, she has received an equivalent increase for pay purposes, and her waiting period for the increase to step 2 begins on July 16, 2000.

An employee who receives a time-limited promotion has received an equivalent increase for purposes of determining the beginning of a waiting period at the higher grade. If the promotion is converted to permanent

without the employee returning to a lower grade, the conversion is not considered a new equivalent increase, and time is counted from the beginning of the time-limited promotion. However, if the employee is returned to a lower grade and then given a permanent promotion, he receives a new equivalent increase, and the waiting period begins with the permanent promotion.

Example 12s:

Joe receives a time-limited promotion on January 2, 2000, to GS-12 step 1. On June 18, 2000, the promotion is converted to permanent. He did not receive an equivalent increase on June 18, so he will be eligible for a WIG to step 2 on December 31, 2000. On the other hand, if he had been returned to a GS-11 position on June 4 and given the permanent promotion on June 18, the repromotion is considered an equivalent increase, and he would not be eligible for a WIG until June 17, 2001.

A NASA employee who receives a Qualifications Pay increase (Chapter 6) is considered to have received an equivalent increase at the time the employee fulfills the 1-year service requirement.

The following situations do not constitute an equivalent increase even though an employee's pay may increase:

- a. General and locality GS pay increases.
- b. The increase of an FWS wage schedule.
- c. The establishment of new or the increase in existing special rate supplement under 5 USC 5305.
- d. A quality step increase.
- e. The return of an employee to the former grade and step from a time-limited promotion (Chapter 3 explains how to set the pay of employees returning from time limited promotions).
- f. The return of an employee who fails to complete a supervisory or managerial probationary period to the former grade and step.
- g. A WIG granted as interim relief by an administrative judge of the Merit Systems Protection Board (MSPB) and then terminated because the employee loses the appeal at the full Board level.
- h. Loss of Qualifications Pay when the employee does not complete the 1-year service requirement.
- i. Increase in pay resulting from moving from one pay system to another (e.g., Federal Wage System to the General Schedule).
- j. Reassignment from a regular rate to a special rate position at the same grade and step has not received an equivalent increase even though he/she has received an increase in pay.

Example 12t:

Jake is denied a WIG to step 2. On September 24, 2000, an administrative judge of the MSPB overturns the denial, and orders that he be given interim relief of a WIG to step 2. The Agency petitions for review. On December 17, the full MSPB upholds the Agency's action, and the interim WIG is terminated. Even though he received a WIG on September 24, it is not considered to be an equivalent increase, and he does not have to start a new waiting period on September 24.

Example 12u:

On July 2, 2000, Fran receives a WIG to step 2 of GS-12 in a regular rate position, \$48,520. On December 3, 2000, she is reassigned to a GS-12 step 2 special rate engineering position, \$50,085. Even though she has received an increase in pay equal to the value of the step in GS-12, she has not received an equivalent increase, and she will be eligible for her WIG to step 3 on the special rate scale on July 1, 2001.

12-4-7. Denials of WIG's

The regulations provide procedures for an agency to follow when it intends to deny a WIG. Essentially these procedures provide for a notice to the employee, an opportunity for the employee to request reconsideration at a higher level, and a right to appeal to the MSPB or file a grievance under a collective bargaining agreement. The basis for the denial will be a less than acceptable performance rating. Employee relations staffs should be consulted if a denial case arises.

After a WIG is denied, the WIG can be granted at any time the Agency determines that the employee's performance has improved to an acceptable level and a rating of record has been issued. The WIG would be effective after the ALOC determination has been made. It would not be made retroactive. The Agency must reevaluate the employee's performance at least every 52 weeks for as long as the WIG is denied.

12-5. Quality Step Increases (QSI's)

A QSI is a step increase granted to recognize outstanding performance. In NASA it must be supported by a performance rating of "Distinguished" and written documentation explaining the employee's outstanding

performance (see appendix C to NPR 3451.1). An employee may be given only one QSI in any 52-week period.

A QSI must be made effective within 120 days of the end of the rating period on which the Distinguished rating is based.

As explained in section 12-4-6, a QSI is not an equivalent increase, so it does not affect the waiting period for an employee's next WIG. However, for employees scheduled to move to steps 4 or 7 in the near future, the QSI would push them into a longer waiting period. In many cases it would be advantageous to the employee to delay a QSI for a few weeks and let the WIG take effect first.

Example 12v:

Lee is due a WIG to step 4 on July 2, 2000. If on June 18, he were given a QSI to step 4, he would not be due a WIG to step 5 until July 1, 2001. This is because although the time he has served in the step still counts and is not affected by the QSI, he has moved to a 104 instead of a 52-week waiting period.

On the other hand, if the WIG to step 4 is allowed to take effect first, he can be given a QSI to step 5 immediately.

Chapter 13

RELOCATION BONUSES

13-1. Introduction

This chapter explains the purpose and procedures for using relocation bonuses.

Relocation bonuses were one of the flexibilities added by FEPCA and modified by the NASA Flexibility Act of 2004 and Federal Workforce Flexibility Act of 2004. Agencies are permitted to pay bonuses to employees who must relocate to another commuting area to accept a position when it is determined that in the absence of the bonus, difficulty would be encountered in filling the position

As explained in Chapter 2 the rules governing bonuses paid under the NASA Flexibility Act have some unique requirements not included in the Federal rules and must be considered when authorizing a bonus. These include:

- Not more than 25% of the total dollar amount of bonuses paid in a fiscal year may be paid to employees in supervisory or managerial positions;
- The enhanced bonus amounts (e.g., those greater than 25% of rate of basic pay) may only be authorized to meet a critical need of the Agency as defined by the NASA's Workforce Plan;
- The bonus is calculated as a percentage of the rate of basic pay (i.e., the General Schedule) unless it addresses a critical need as specified in the Workforce Plan then it is calculated from the applicable locality or special rate table. All bonuses paid under the Federal rules calculate the bonus as a percentage of the locality rate schedule; and
- NASA must report annually to Congress on its use of bonuses.

NOTE: These additional restrictions on bonuses authorized under the NASA Flexibility Act make it generally more advantageous to authorize bonuses under the Federal Workforce Flexibility Act. For this reason the information and guidance that follows below is based on the overall Federal rules and not the NASA unique flexibilities. For complete information on relocation bonuses authorized under the NASA Flexibility Act go to the Interim Implementing Policies at <http://nasapeople.nasa.gov/hclwp/index.htm>.

13-2. Authority

December 2006

- a. Law authorizing relocation bonuses: 5 USC 5753 and P.L. 108-411
- b. OPM regulations concerning relocation bonuses: 5 CFR 575.201 to 575.209
- c. NASA policy: Chapter 4 of NPG 3530.1: Recruitment and relocation bonuses and the NASA Plan for implementing the Recruitment, Relocation, and Retention Incentive Authorities under the Federal Workforce Flexibility Act of 2004

13-3. Coverage

Relocation bonuses may be paid to GS, AD (NEX 42 USC2473(c)), SES, SL, ST, Law enforcement, prevailing rate and Executive Schedule employees. They may not be paid to the head of an Agency including the NASA Administrator, noncareer SES or Excepted Service Schedule C appointees.

Only current Federal employees who will move to another commuting area without a break in service are eligible for relocation bonuses.

13-4. Approval Authority

Centers have the authority to approve the payment of relocation bonuses. However, the Associate Administrator for Institutions and Management is delegated the authority to approve them for all SES, SL, ST, and NEX positions. Centers wishing to request approval of a bonus for an SES, SL, NEX or ST position should submit the request to the Office of Human Capital Management accompanied by complete documentation which demonstrates that the criteria described in section 13-8 are met.

13-5. Requirement for Prior Approval

Relocation bonuses must be approved before the applicant enters on duty at the new location. Once an individual enters on duty, NASA has no authority to approve a relocation bonus.

13-6. Service Agreements

Before a relocation bonus may be paid, the applicant must sign a service agreement to remain with NASA in the new commuting area for at least 6 months. In the case of a temporary duty assignment of less than 6 months, the service agreement must equal the length of the assignment. (Note: NPR 3530.1 currently requires a minimum agreement of 6 months or the length of a temporary duty assignment. OPM regulations currently do not specify a minimum agreement, but the minimum agreement in NASA is still 6 months.)

Centers may require agreements that are longer than the 6 month minimum but not to exceed 4 years.

If an employee is under overlapping service agreements, they will run concurrently.

Example 13a:

Maria is hired at Headquarters on January 1, 2000, and receives a recruitment bonus. She signs a 12-month service agreement. On July 1, 2000, she relocates to JSC and signs a 12-month service agreement because she is receiving a relocation bonus. The service agreements for both the recruitment and relocation bonuses will both be in effect between July 1, 2000, and December 31, 2000. If she were to leave NASA on October 1, 2000, she would have to repay the bonus as specified in the service agreement.

An employee who leaves NASA or the commuting area prior to completing the agreement may be subject to repaying the bonus as provided for in the service agreement.

Example 13b:

Carla receives a relocation bonus of \$15,000 to relocate to KSC from another Federal Agency and signed a 12-month service agreement. After 6 months, and 17 days she left NASA to go to another Federal Agency. The service agreement specifies she must reimburse the Agency on a pro rata basis for each full month of service that she does not complete. Because she did not complete half of her service agreement, she must repay \$7,500, which is half of \$15,000. Note: She does not get credit for the excess 17 days because it was not a full month.

An employee who is separated involuntarily **not** for cause (e.g., RIF) does not have to repay any part of the bonus that is attributable to completed service or any part of the bonus **already received** that is attributable to uncompleted service. If an employee is separated for cause (including poor performance, or conduct), the employee is entitled to retain any incentives already received attributable to completed service and may receive any additional incentives not already received attributable to completed service if the service agreement provides for such payment but must repay any incentive already received not attributable to completed service.

If NASA determines that it is necessary to relocate an employee to another commuting area, he/she would not have to repay the bonus.

Example 13c:

Jess is given a relocation bonus to move from Headquarters to Langley, and he signs a 12-month service agreement. 6 months later NASA determines that it is necessary to move him to KSC. Because his relocation was based on NASA's determination, he would not have to repay the bonus even though he was at Langley for only 6 months.

Centers may waive the repayment of a bonus when it is determined that repayment would be against equity or good conscience or not in the public interest. (See NPD 9645.2D.)

Example 13d:

Kevin received a relocation bonus and signed a 1-year service agreement. 6 months later, he had to move outside the commuting area in order that his wife could receive experimental medical care for a life threatening illness. In a case such as this, it might be appropriate to waive the repayment of the relocation bonus he received not attributable to completed service.

13-7. Amount and Payment of Bonuses

Relocation bonuses may be paid in a lump sum, in equal installments (e.g., on a biweekly, monthly, quarterly basis, in variable payments at the end of specified periods, as a final lump sum payment or in a combination of payment methods. The service agreement must include the method of payment and payment schedule. They are not part of basic pay for any purpose (although they are taxable as income). Under the Federal rules, they can be up to 25% of the annual rate of basic pay of the position the employee is relocating to, including locality pay or special rate supplement at the beginning of the service period multiplied by the number of years (including fractions) in the service period (not to exceed 4 years). If an employee is on a part-time schedule, the bonus is calculated as a percentage of the part-time base salary.

To meet a critical need of the Agency, the Office of Human Capital Management can request that OPM approve a bonus not to exceed 50% of the employee's annual rate of basic pay multiplied by the number of years

in the service agreement (not to exceed 100% of the employees annual rate of basic pay at the beginning of the service period. The critical need must be compelling and well documented explaining how the specific competencies associated with the position are critical to successful accomplishment of an important program, project or initiative.

Example 13e:

Sarah is being relocated from KSC to ARC at GS-9 step 1. Her salary including locality pay will be \$37,240. She is being offered a 25% relocation bonus under the NASA Flexibility Act. Her bonus will be \$8,095 or 25% of \$32,380, which is the rate for GS-9 step 1 of the basic General Schedule without locality pay.

- If she were on a part-time schedule of 20 hours per week, her bonus would be 50% of \$8,095 or \$4,047.50.
- If Sarah were being relocated to an engineering position with a special rate salary for GS-9 step 1 of \$42,091, her bonus would be 25% of \$32,380 or \$8,095 – same as for locality pay.

The bonus may not actually be paid to the employee until he/she has established a residence in the new commuting area.

13-8. Criteria

Each bonus must be approved by a higher-level official than the recommending official except where the Administrator is both the recommending and approving official.

In order to pay a bonus, there must be a written case-by-case determination that in the absence of the bonus, the Center would encounter difficulty in filling the position.

In determining whether a relocation bonus should be paid and in determining the amount of any such payment, Centers should consider the following factors, as applicable in the case at hand:

- a. The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
- b. Recent turnover in similar positions;

- c. Labor-market factors that may affect the ability of the Center to recruit candidates for similar positions now or in the future; and
- d. Special qualifications needed for the position.

Centers may maintain data for types of positions, so that they do not have to be developed separately for each case. This data can then be used to support individual cases, but the final determination still must be made on a case-by-case basis.

The fact that a position is hard to fill does not by itself automatically mean that a relocation bonus is appropriate. Centers must document that the applicant has the qualifications required for the position and that he/she would not want to relocate without the bonus.

NASA may waive the requirement for case-by-case determinations in two situations:

- a. For groups of employees under mobility agreements when it is determined that relocation bonuses are necessary to retain these employees; or
- b. When a component of the agency is being moved to another commuting area and it is determined that relocation bonuses are necessary for groups of employees to ensure the continued operation of the unit.

If Centers have situations that meet either of these conditions, they should contact the Office of Human Capital Management to discuss the matter.

13-9. Documentation

Centers must keep a written record of each determination to pay a relocation bonus. The records should be complete enough to permit reconstruction of the action including:

- a. The basis for determining that the position would be difficult to fill without paying the bonus,
- b. The qualifications of the applicant, and
- c. The basis for determining that the applicant would not have wanted to relocate without the bonus.

Centers should also maintain copies of service agreements, repayments, and waivers. Documentation on each bonus should be retained for 3 years.

Centers will also maintain the following records: Data on the number of employees to whom bonuses are offered, the percentage of salary

offered, the number accepted, funds expended, and for all individuals who are offered bonuses, occupations, disciplines, experience, education levels, grade point averages, and educational institutions attended.

Chapter 14

RETENTION INCENTIVES

14-1. Introduction

This chapter explains the purpose and procedures for using retention incentives.

Retention incentives were one of the flexibilities added by FEPCA and modified by the NASA Flexibility Act of 2004 and the Federal Workforce Flexibility Act of 2004. Agencies are permitted to pay incentives to employees if the unusually high or unique qualifications of the employee or a special need of the Agency makes it essential to retain the employee and the Agency determines that the employee would be likely to leave the Federal government in the absence of an allowance.

As explained in Chapter 2 the rules governing incentives paid under the NASA Flexibility Act have some unique requirements not included in the Federal rules and must be considered when authorizing an incentive.

These include:

- Not more than 25% of the total dollar amount of incentives paid in a fiscal year may be paid to employees in supervisory or managerial positions;
- The enhanced incentive amounts (e.g., those greater than 25% of rate of basic pay) may only be authorized to meet a critical need of the Agency as defined by the NASA's Workforce Plan;
- The bonus is calculated as a percentage of the rate of basic pay (i.e., the General Schedule) unless it addresses a critical need as specified in the Workforce Plan then it is calculated from the applicable locality or special rate table. All bonuses paid under the Federal rules calculate the bonus as a percentage of the locality rate schedule; and
- NASA must report annually to Congress on its use of incentives.

NOTE: These additional restrictions on incentives authorized under the NASA Flexibility Act make it generally more advantageous to authorize incentives under the Federal Workforce Flexibility Act. For this reason the information and guidance that follows below is based on the overall Federal rules and not the NASA unique flexibilities. For complete information on retention incentives authorized under the NASA Flexibility Act go to the Interim Implementing Policies at <http://nasapeople.nasa.gov/hclwp/index.htm>.

14-2. Authority

- a. Law authorizing retention allowances: 5 USC 5754, P.L. 108-411
 - b. OPM regulations concerning retention allowances: 5 CFR 575.301 to 575.309
2. NASA policy: NPG 3530.1: Retention Incentives under the NASA Flexibility Act and the NASA Plan for implementing the Recruitment, Relocation, and Retention Incentive Authorities under the Federal Workforce Flexibility Act of 2004
- a.

14-3. Coverage

Retention incentives may be paid to GS, AD (NEX 42 USC 2473(c))SES, SL, ST, law enforcement, prevailing rate and Executive Schedule employees. They may not be paid the head of an Agency including the NASA Administrator, noncareer SES or Excepted Service Schedule C appointees.

A retention incentive may not be authorized for an employee with a current performance rating lower than "Fully Successful". A Center may not offer or authorize a retention incentive prior to employment with the Agency or commence a retention incentive while the employee is serving under a recruitment or relocation bonus service agreement.

Example 14a:

Barry is appointed to a GSFC job on December 1, 1999. On February 1, 2000, GSFC begins paying him a retention incentive. On July 1, 2000, he relocates to KSC and is paid a relocation bonus. If KSC determines it to be necessary to retain Barry, it may continue to pay him the retention incentive.

14-4. Approval Authority

Centers have the authority to approve the payment of individual retention incentives. However, the Associate Administrator for Institutions and Management is delegated the authority to approve them for all SES, SL, ST, and NEX positions. Centers wishing to request approval of an incentive for an SES, SL, NEX or ST position should submit the request to the Office of Human Capital Management accompanied by complete documentation which demonstrates that the criteria described in section 14-6 are met.

Requests to pay group incentives must be approved by the Assistant Administrator for Human Capital Management.

14-5. Amount and Payment of Incentives

Retention incentives may be paid in installments after the completion of specified periods of service or a single lump-sum payment after completion of the full service period. They can be up to 25% of basic pay of the employee's position including locality pay or special rate supplement. The employee is entitled to receive the incentive for each hour that he/she receives basic pay including paid leave.

A written service agreement is required unless an incentive is paid in bi-weekly installments and each bi-weekly installment is set at the full retention incentive percentage rate established for the employee.

A service agreement is required for any employee receiving a higher retention incentive as a result of OPM approval of a waiver to the maximum limit. Service agreements must include:

1. The required period of service, including commencement and termination dates;
2. The retention incentive percentage rate;
3. The method of payment and payment schedule;
4. Conditions under which this the agreement may be terminated before expiration of the service period.
5. Conditions under which the employee would be required to repay the incentive;
6. Any other terms and conditions of employment e.g., work schedule, performance level, credit for paid or non-paid leave status, etc.
7. A statement that termination of the service agreement is not grievable or appealable.

Retention incentives authorized for a group or category of employees is limited to 10% of an employee's rate of basic pay.

If necessary to meet a critical need of the Agency, NASA can request OPM to waive the limitation on incentive amounts and authorize the Agency to pay an individual or group of employees a retention incentive up to 50% of the employees rate of basic pay.

Example 14b:

Sarah is a GS-9 step 1 employee at ARC. Her salary including locality pay is \$49,124. She is being offered a 25% retention allowance under the Federal Workforce Flexibility Act. On an annual basis her allowance would be \$12,281 or 25% of \$49,124, the rate for GS-9 step 1 of the basic General Schedule **including** locality pay. Each pay period her allowance will be \$470 (\$12,281 divided by 2087 times 80). She will receive the \$470 as part of her paycheck even though it is not considered basic pay for any purpose. If she were on a part-time schedule, 20 hours per week, she would receive the retention allowance only for the hours actually worked, so it would be \$235 each pay period.

If she were receiving a retained rate of \$65,000 her retention allowance would be \$16,250 (25% of \$65,000). Therefore, each pay period of full-time work she would receive \$623 (\$16,250 divided by 2087 times 80).

14-6. Criteria

14-6-1. Individual Incentives

Each incentive must be approved by a higher-level official than the recommending official except where the Administrator is both the recommending and approving official.

In order to pay an incentive, there must be a written case by case determination that the unusually high or unique qualifications of the employee or a special need of NASA makes it essential to retain the employee and that in the absence of the incentive, the employee is likely to leave the Federal government. It doesn't matter whether the employee would be leaving to go to the private sector or to retire. In either case, an incentive may be paid. Retention incentives may not be paid on the basis that the employee would leave NASA to go to another Federal agency.

Note: A retention incentive can be paid under the NASA Flexibility Act of 2004 on the basis that the employee would leave NASA to go to another Federal agency provided all requirements stipulated in the Act are met) For each case there must be a written description of how the employee's departure will affect the Center's ability to carry out an activity or function that is essential to NASA's mission. In determining whether a retention incentive should be paid and determining the amount of any such payment, Centers should consider the following factors, as applicable in the case at hand:

- a. The success of recent efforts to recruit candidates and retain employees with qualifications similar to those possessed by the employee for positions similar to the position held by the employee;
- b. The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee; and
- c. The immediate and longer-term effect of the employee's departure on a project or program of the employee's departure.
- d. Efforts to use non-pay authority to help retain the employee (e.g., special training and work schedule flexibilities or improving working conditions)
- e. Salaries typically paid for comparable non-Federal positions in the geographic area.

14-6-2. Group Incentives

Centers may approve incentives of up to 10% for groups of employees. The characteristics of the group should be narrowly defined, and everyone who meets those characteristics must be given at least the same incentive. However, there is nothing to prevent a Center from making an individual determination as described in section 14-6-1 to pay an employee in a group a higher incentive than the rest of the group. However, Centers should thoroughly document why an individual should be given a larger incentive than the other group members. Examples of the criteria that Centers may wish to use to identify groups are:

- a. Occupational series or AST classification
- b. Grade level
- c. Distinctive job duties
- d. Unique qualifications
- e. Assignment to a special project
- f. Minimum Agency service requirements
- g. Organization or team designation
- h. Geographic location, and
- i. Performance level.

Note: A group incentive cannot be authorized for a member of the group who has a current performance rating that is lower than "Fully Successful".

The decision to pay retention incentives for groups of employees must be made on the basis of a written determination that the category of employees has unusually high or unique qualifications, or that NASA has a

special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category is likely to leave Federal service in the absence of the incentive.

The determination that there is a high risk that a significant number of employees in the targeted category is likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

OPM may approve retention incentives under the Federal Workforce Flexibility Act for individuals or groups of employees up to 50% of the employee's rate of basic pay based on a critical agency need. Requests for higher group incentives should contain the following information and be submitted to the Office Human Capital Management:

- a. A description of the group or category and number of employees to be covered by the proposed retention allowance;
- b. A written determination that the group or category of employees meets the conditions specified above;
- c. The proposed percentage retention allowance payment and a justification for that percentage;
- d. The expected duration of retention allowance payments; and
- e. Any other information pertinent to the case at hand.

In addition, all requests for individual or group incentives must include a convincing argument that the employee's or group's unusually high or unique competencies are critical to the successful accomplishment of an important NASA mission, project, or initiative.

14-7. Adjustment or Termination of Retention Incentives

Centers may reduce or terminate incentives when no service agreement is required whenever payment at the level originally approved is no longer warranted.

A retention incentive service agreement may be terminated by the Center based on legitimate management needs (e.g., the employee's position is affected by RIF, there are insufficient funds to continue the incentive, conditions no longer warrant payment, the employee is reassigned to a different position not within the terms of the agreement.)

Centers must terminate a service agreement if an employee is demoted or separated for cause (conduct or unacceptable performance), if the

employee's performance rating of record is less than "Fully Successful" during the service period, or if the employee otherwise fails to fulfill the terms of the service agreement.

The reduction or termination of an incentive is not an adverse action and therefore generally is not appealable. However, it is a personnel action for purposes of the Whistle Blower Protection Act, and therefore, it may be challenged under that law.

14-8. Review Requirement

Centers should review retention incentives periodically to determine whether they should be continued for individual employees or groups of employees. At a minimum, the review must take place annually, and the results of each review must be documented in writing.

Chapter 15

PHYSICIANS' COMPARABILITY ALLOWANCES

15-1. Introduction

This chapter explains policies and procedures for administering the Physicians' Comparability Allowance (PCA) program.

The PCA program was established in 1978 to aid in the recruitment and retention of physicians by permitting Federal agencies to pay them an allowance that would be in addition to basic pay. Until 2000, the program was authorized for 2 years at a time and required Congressional action to extend it at the end of each period. In 2000, the law was amended to make the program permanent.

15-2. Authority

- a. Law authorizing PCA: 5 USC 5948
- b. Public Law 106-571: Makes PCA permanent and includes PCA in retirement computation
- c. OPM Regulations implementing PCA program: 5 CFR 595
- d. NASA Plan to Implement PCA Program as approved by OMB

15-3. PCA Plan

Before agencies may pay PCA's, they must develop a PCA plan and submit it to the Office of Management and Budget for approval. NASA's NASA continues to request and obtain an approved plan annually. This plan must be renewed each fiscal year.

This chapter supplements and explains NASA's PCA plan but must be read in conjunction with it.

15-4. Purpose

PCA's are paid to physicians in situations where NASA is experiencing recruitment or retention problems. They must be set at the minimum amount necessary to deal with the problems, and they are paid for a set period of time.

15-5. Definition of Physician

A physician is defined as a doctor of medicine, osteopathy or dentistry. For the purpose of consideration for an allowance, a physician must be employed under the General Schedule, Senior Level (SL), *Senior Executive Service, or in a position established under 5 USC 5376 or similar authority relating to administratively determined pay for certain scientific and professional personnel (ST). Additionally, an individual is considered employed as a physician only if serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent without those qualifications. A PCA may not be paid to an incumbent of a NASA excepted position authorized under the Space Act.

***Note:** NASA's plan specifically excludes members of the SES from coverage.

15-6. Eligibility

An individual on a permanent or time limited appointment of at least 1 year who is employed as a physician (as defined in section 15-5) may qualify for the allowance, except for the following:

- a. Those employed on an intermittent basis regardless of how many hours they work;
- b. Those employed less than 20 hours per week on a regularly scheduled basis;
- c. Interns or residents;
- d. Reemployed annuitants based on civilian employment in the federal or District of Columbia civil service; or
- e. Those fulfilling an employment obligation incurred as a result of participation in a federally subsidized scholarship program.

NASA employees assigned to other organizations under the Intergovernmental Personnel Act by detail or appointment are not eligible for a PCA. If a NASA employee receiving a PCA goes on an IPA assignment before the PCA agreement expires, the PCA agreement and payments are terminated, but the employee is permitted to retain PCA payments already received. Individuals assigned to a physician position in NASA by appointment under the Intergovernmental Personnel Act may be paid a PCA, but individuals assigned by detail may not be given a PCA.

15-7. Categories

Under NASA's plan PCA may be paid for physicians in any of the following categories:

Category I: Positions primarily involving the practice of medicine or direct service to patients, involving the performance of diagnostic, preventative

or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers; and similar settings, but not including positions described in Category II below.

Category II: Positions primarily involving the evaluation of physical fitness, the provision of initial treatment of on-the-job illness or injury, or the performance of pre-employment examinations, preventative health screenings or fitness-for-duty examinations.

Category III: Positions not described in Categories I and II above, including positions involving disability evaluation and rating, the performance of medical autopsies, training programs, including the administration of patient care or medical research and experimental programs.

NASA Centers may establish subdivisions of the three categories of positions based on relevant factors. These may include such factors as location, grade or level, medical specialization of the position and the level of qualifications sought for physicians in the category.

15-8. Criteria

Physicians in one of the above categories are eligible for an allowance only if the following conditions are met:

- a. There is positive evidence (such as vacant positions, an unacceptably high turnover rate, or significantly higher salaries in the open labor market), indicating the inability to recruit and/or retain physicians in the category to meet staffing needs;**
- b. The qualification requirements for vacant positions do not exceed the qualifications actually necessary for positions in the category;**
- c. Efforts have been made to recruit qualified candidates for vacant positions and/or retain physicians presently employed in positions in the category; and**
- d. An insufficient number of qualified candidates is available to fill the existing vacancies at the basic rate of pay that is offered.**

The determination to pay PCA is primarily position based. Thus, unlike an appointment above the minimum or a recruitment bonus (see Chapter 2), once a Center determines that a PCA should be paid for a particular position or group of positions, it is not necessary to determine, for example, that an individual physician would not accept the position unless the PCA is paid. However, all physicians occupying positions for which approval has been granted must be offered a PCA, provided they meet the criteria established by the Center. (The only exception is physicians who have recently retired from the uniformed services as explained in section

15-10.) The amount of the PCA may vary by such factors as grade, board certification, or subspecialization as long as these variations are made part of the initial approval by a Center of categories and subdivisions. *For example* for positions in category 1, a Center could establish the following PCA amounts for physicians with more than 48 months of service:

- GS-13 without board certification, \$14,000.00
- GS-13 with board certification in one applicable specialty, \$21,000.00
- GS-13 with board certification in more than 1 applicable specialty, \$23,000.00
- GS-14 without board certification, \$15,000.00
- GS-14 with board certification in one applicable specialty, \$24,000.00
- GS-14 with board certification in more than one applicable specialty, \$26,000.00
- GS-15 without board certification, \$16,000.00
- GS-15 with board certification in one applicable specialty, \$28,000.00
- GS-15 with board certification in more than one applicable specialty, 30,000.00

Note, the above example is intended only to illustrate the concept of variations that a Center might approve. The actual subdivisions and amounts must be established based on determinations of what will be necessary to solve the recruitment or retention problem.

15-9. Maximum Amount of Allowance

The amount of the PCA must be the minimum amount required to recruit or retain the physician. However, it may not exceed the maximum amounts authorized by law and NASA's plan. For full time employees these are:

- a. \$14,000.00 per year for physicians with less than 24 months of Federal civilian service as a physician
- b. \$24,000.00 per year for physicians with 24 to 48 months of Federal civilian service as a physician
- c. \$30,000.00 per year for physicians with more than 48 months of Federal civilian Service as a physician

For part-time employees the maximums are prorated. Thus, the maximum for a physician with more than 48 months of service who is working a part time schedule of 30 hours per week would be \$22,500.00, which is 3/4 of the \$30,000 maximum for full time employees.

When computing prior Federal service as a physician, the service does not have to be continuous. Periods of leave without pay may not be counted, and service in the military may not be counted. Service in the Public Health Service Commissioned Corps and service under Title 38 with the Department of Veterans Affairs or other agencies authorized to use Title 38 may be counted.

Example 15a:

Scot served as a physician in the Navy from January 1, 1992 to January 1, 1995. Upon leaving the navy, he accepted an administrative position with the Department of Veterans Affairs until February 1, 1997, at which time he was reassigned to a position as a physician. However, he immediately went on leave without pay until February 1999. If NASA were to hire him on January 1, 2001, he would have had 23 months in pay status as a physician in a civilian Federal position, so the maximum allowance that could be offered would be \$14,000.00. His service in the Navy and his service with DVA before being assigned to a physician position may not be counted. Also, the period of leave without pay may not be counted.

15-10. Approval Authority

Centers have the authority to approve subdivisions and establish PCA amounts for positions that fall into one of the categories described in section 15-7.

Individual agreements do not have to be provided to the Office of Human Capital Management.

Centers that approve PCA's must have documentation to support the approval. Documentation must demonstrate clearly how the criteria described in section 15-8 are met. Documentation must contain the information shown in Appendix C to this chapter.

15-11. Agreements

A PCA may not be paid until the Center Director or appropriate Headquarters official and the physician sign an agreement. A sample agreement is contained in Appendix B to this chapter. Centers may modify the sample to meet individual needs, provided that all pertinent information is contained in the agreement.

Payments begin the first full pay period after the agreement is signed by all parties unless a later date is specified in the agreement.

By law, agreements must be at least 1 year. Beyond this minimum requirement there is no set length for agreements, but normally they should not be more than 2 years. However, Centers might find that longer agreements can be useful in some situations. Agreements must always start at the beginning of a pay period and terminate at the end of a pay period.

For purposes of PCA agreements, a year is 26 pay periods.

If a physician becomes eligible for a higher PCA during the life of an agreement because of length of service or other change such as obtaining board certification, a Center has the option but is not required to negotiate a new agreement.

Example 15b:

Ruth had 23 months of Federal Service as a physician and negotiated a 2-year PCA agreement with KSC. Because she had only 23 months of service, the maximum PCA that she could be paid was \$14,000.00 per year. After 13 months under the agreement, she will have 36 months of service, and KSC could negotiate a new agreement and pay her a PCA under that new agreement up to \$24,000.00 per year.

If during the life of an agreement, a physician becomes eligible for a PCA under a newly announced category, he/she has the option of terminating the current agreement and negotiating a new one under the new category. The expiration date under the new agreement may not be any earlier than the expiration date under the current agreement.

15-12. Termination of Employment

If a physician who is being paid a PCA leaves NASA or is separated for misconduct, he/she will have to repay the PCA as follows:

- a. If he/she has completed less than 1 year under the agreement, he/she must repay all the PCA that has been received.
- b. If he/she has completed 1 year or more under the agreement, he/she must repay the PCA received during the preceding 26 weeks. As explained above, 1 year equals 26 pay periods.

Even if the physician goes to another Federal agency, he/she is subject to the repayment requirements. If the physician's tour of duty is changed at his/her request to a part-time tour of duty of less than 20 hours per week or intermittent, the physician is subject to repayment requirements unless it is determined that the change is for reasons beyond the employee's control.

If the physician is separated for poor performance without any misconduct, repayment is not required.

A separation by reduction in force does not require repayment.

Center Directors may waive repayment in situations that are determined to be beyond the physician's control, such as hardship or disability. (See NPD 9645.2D.)

15-13. Effect of Position Changes

- a. If a physician moves from one position in NASA for which PCA is authorized to a different position for which it is authorized, the agreement is terminated, and a new one must be renegotiated.
- b. If a physician moves from a position in NASA for which PCA is authorized to a NASA position for which PCA is not authorized, the PCA agreement is terminated. The physician is entitled to retain the PCA allowance that has been received regardless of whether the position change was initiated by the physician or management. Thus, for example, a physician who is receiving a PCA and is selected under a merit promotion announcement for a position for which there is no PCA will have his/her PCA agreement terminated but will be permitted to retain all allowance payments already received.
- c. If a physician receiving PCA moves to a position in another Federal agency for which PCA is authorized, he/she is still subject to the repayment requirements described in section 15-12.
- d. A physician receiving a PCA may be detailed to another position in NASA for which PCA is authorized. However, PCA may not be paid to a physician while detailed to a NASA position for which PCA is not authorized or to a position in another Federal agency even if PCA is authorized for that position.

15-14. Reduction in Force (RIF)

As explained in section 15-12, a physician who is separated by RIF is not required to repay any PCA that has been received. This is also true for a physician who resigns or retires after receiving a notice of separation.

If a physician receiving a PCA is moved by RIF procedures to another position for which a higher PCA is authorized, a new agreement with the higher PCA must be negotiated. If he/she is moved to a position for which a lower PCA is authorized, he/she will remain under the existing agreement until its expiration and during that time continue to be paid the higher PCA.

If a physician receiving a PCA is moved by RIF procedures to a position for which no PCA has been authorized, the PCA agreement is terminated, but no repayment is required.

15-15. Payment of the PCA

The PCA is paid each pay period. It is only paid for hours in pay status.

Example 15c:

Nick is receiving a PCA of \$13,000.00 per year. Each pay period, he will receive \$498.00 ($\$13,000.00$ divided by 2087 times 80).

Note, the PCA amount is rounded off to the next lowest dollar. It should never be rounded up to the next dollar because that could cause the total to go above the maximum allowable PCA. In their agreements, Centers should specify both the annual PCA and the amount for each pay period.

Example 15d:

If in a pay period, Nick had 10 hours of leave without pay, the PCA which he would receive for that pay period would be $\$13,000.00$ divided by 2087 times 70 equals \$436.00.

PCA may be paid for part time employees who have a regularly scheduled tour of duty of at least 40 hours per pay period. However, the amount of the PCA is based on the number of hours actually worked.

Example 15e:

If Nick were a part-time employee with a regularly scheduled tour of 30 hours per week or 60 hours per pay period, his PCA would be \$373.00 (\$13,000.00 divided by 2087 times 60). If Nick worked 65 hours during a pay period, his PCA for that pay period would be \$404.00 (\$13,000 divided by 2087 times 65).

A PCA is not paid to either a full or part-time employee for any pay period during which the number of hours in pay status falls below 40. Pay status includes all paid leave or compensatory time off.

If a physician is subject to a Federal loan repayment program the amount of the loan being repaid will be deducted from the allowance.

15-16. Relation of PCA to Other Pay

The PCA is not basic pay for any purpose except retirement and the Thrift Savings Plan (see section 15-17).

PCA is not considered to be premium pay.

PCA's are subject to the level I cap on total compensation (see section 17-7).

15-17. Use of PCA in Retirement and TSP Computations

On December 28, 2000, Public Law 106-571 made PCA's basic pay for retirement purposes provided that certain conditions are met.

15-17-1. Basic Requirement

In order for PCA to be used when computing an employee's average high 3 salary for retirement purposes, two requirements must be met.

a. At the time of separation, the employee must have had 15 years of civilian service as a Federal physician. This service may have occurred before or after December 28, 2000.

b. The percentage of the PCA that is actually used in the computation is based on the amount of civilian service as a Federal physician that occurred on or after December 28, 2000.

- (1) 0 for less than 2 years

- (2) 25% for 2 or more years but less than 4 years
- (3) 50% for 4 or more years but less than 6 years
- (4) 75% for 6 or more years but less than 8 years
- (5) 100% for 8 or more years

Example 15f:

Sandy has been a Federal physician since January 1985. She has been receiving a PCA of \$20,000.00. She plans to retire January 2002. Even though she meets the 15-year requirement for Federal Service as a physician, she has less than 2 years of service as a physician since December 28, 2000. Therefore, 0% of her PCA may be used when computing her retirement.

If Sandy delays her retirement until January 2003, she would have more than 2 years of service since December 28, 2000. Therefore 25% of her \$20,000 PCA (\$5,000.00 per year) may be added to her salaries when computing her high 3 average salary.

Note, when doing the actual calculations, you would use 25% of the PCA actually paid each pay period. For example, if during 6 months of the 3 years that make up her high 3, Sandy's PCA were only \$16,000, then 25% of that (approximately \$2,000.00 -- $\$16,000.00 \times 25\%$ divided by 2, because 6 months is half a year) would be added to her salary during that 6-month period.

15-17-2. Disability and Survivor Annuities

For disability retirement or a survivor annuity based on an employee's death prior to separation, 100% of the PCA would be used to compute the annuity even if the requirements described in 15-17-1 are not met.

15-17-3. Deductions

For pay periods beginning on or after December 28, 2000, retirement deductions are to be calculated based on the full PCA being paid. This is true even if the employee never benefits from the enhanced computation.

Example 15g:

Alfonzo is a CSRS employee and has been a Federal physician for 5 years, and he is being paid a PCA of \$20,000.00. Beginning with the first pay period after December 28, 2000, 7% of his PCA will be deducted each pay period (.8% if he were a FERS employee). If he retires in 2002, none of his PCA will be considered when computing his retirement even though retirement deductions have been taken from it.

15-17-4. Thrift Savings Plan

Beginning with the first pay period on or after December 28, 2000, the full PCA is to be used when computing Agency and those employee TSP deductions based on a percentage of salary.

15-18. Records

In addition to the documentation described in section 15-10 and Appendix A, Centers must maintain information on the number of allowances paid, the amount of each allowance, and the affect of allowances on recruitment or retention problems.

Appendix A of Chapter 15

National Aeronautics and Space Administration (NASA) Plan for Implementation of The Physicians' Comparability Allowance Program

1. **Purpose:** The purpose of this Plan is to prescribe the NASA policies and procedures for administering the Physician's Comparability Allowance Act of 1978, as amended. This Act provides that certain federally employed physicians may be authorized the payment of an allowance in return for a specified period of service. These allowances are paid only in the case of categories of physicians for which NASA is experiencing a significant recruitment and/or retention problem and are fixed at the minimum amounts necessary to deal with such problems.
2. **Definition:** A physician is defined as a doctor of medicine, osteopathy or dentistry. For the purpose of consideration for an allowance, a physician must be employed under the General Schedule, Senior Level, or in a position established under 5 USC 5376 or similar authority relating to administratively determined pay for certain scientific and professional personnel. Additionally, an individual is considered employed as a physician only if serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent without those qualifications.
3. **Applicability:** An individual employed as a physician (as defined in paragraph 2) may qualify for the allowance, except for the following:
 - a. Those employed on less than half-time (20 hours per week) on a regularly scheduled or intermittent basis;
 - b. Interns or residents;
 - c. Reemployed annuitants based on civilian employment in the federal or District of Columbia civil service; or
 - d. Those fulfilling an employment obligation incurred as a result of participation in a federally subsidized scholarship program.
4. **Policy:**
 - a. The allowance may be paid to physicians serving in any of the following categories;
 - i. **Category I: Positions primarily involving the practice of medicine or direct service to patients, involving the**

- performance of diagnostic, preventative or therapeutic services to patients in hospitals, clinics, public health programs, diagnostic centers; and similar settings, but not including positions described in Category II below.
- ii. **Category II: Positions primarily involving the evaluation of physical fitness, of the provision of initial treatment of on-the-job illness or injury, or the performance of pre-employment examinations, preventative health screenings or fitness-for-duty examinations.**
 - iii. **Category III: Positions not described in Categories I and II above, including positions involving disability evaluation and rating, the performance of medical autopsies, training programs, including the administration of patient care or medical research and experimental programs.**
 - iv. **NASA may establish additional subdivision of the three categories of positions based on factors the Administrator determines relevant. These may include such factors as location, grade or level, medical specialization of the position and the level of qualifications sought for position in the category.**
- b. **Physicians in one of the above categories are eligible for an allowance only if the following conditions are met:**
 - i. **There is positive evidence (such as vacant positions, an unacceptably high turnover rate, or significantly higher salaries in the open labor market), indicating the inability to recruit and/or retain physicians in the category to meet staffing needs;**
 - ii. **The qualification requirements for vacant positions do not exceed the qualifications actually necessary for positions in the category;**
 - iii. **Efforts have been made to recruit qualified candidates for vacant positions and/or retain physicians presently employed in positions in the category; and**
 - iv. **A sufficient number of qualified candidates is not available to fill the existing vacancies at the basic rate of pay that is offered.**
 - c. **The amount of the allowance authorized will be the minimum amount necessary to address the recruitment or retention problem for each category and may not exceed:**
 - i. **Up to \$14,000 per annum if the employee has served as a Government physician for 24 months or less**
 - ii. **Up to \$24,000 per annum if the employee has served as a Government physician for 24-36 months**
 - iii. **Up to \$30,000 per annum if the employee has served as a Government physician for more than 48 months.**

For the purposes of determining length of service, prior service as a Government physician need not have been continuous, but periods of leave without pay may not be counted. Service in the military is not creditable.

- d. Entitlement to the allowance does not accrue during a period that base pay does not accrue.
 - e. Under applicable law, the allowance is considered basic pay for retirement and the thrift savings plan.
 - f. The allowance is not considered as basic pay for computing maximum salary limitations, insurance entitlement, or other benefits related to basic pay.
5. Procedures: The NASA Administrator may approve payment of the allowance to individual eligible physicians in any amount that does not exceed the maximum amount established in paragraph 4c of this Plan. Approval will be contingent upon the physician executing an agreement to serve in the position described in the agreement (attachment 1). In accordance with Agency policy, the Administrator may delegate this authority to the Center Directors.
- a. The effective date of the agreement will be the date the agreement is signed by the physician, provided the agreement has been otherwise appropriately executed and approved. Payment of the allowance will be effective at the beginning of the first pay period that begins on or after the date of the agreement.
 - b. The rate payable for the duration of the agreement will be based on the position in which the physician is serving on the effective date of the agreement.
 - c. The allowance will be paid in the same manner and at the same time as basic pay.
 - d. The amount paid to a physician employed 20 hours or more per week on a regularly scheduled basis but less than full time (40 hours per week), will be on a pro-rata basis of the amount which would be authorized for a full-time employee in the same position.
 - e. If the physician is serving with the government under a loan repayment program, the amount of the loan being repaid will be deducted from any allowance for which the physician is eligible. Any portion of the allowance that exceeds the amount of the loan being repaid may then be paid under regular procedures.
 - f. If the physician is covered under more than one comparability allowance category, an agreement may be executed under the more advantageous category.

9. **A copy of this Plan should be made available for review by each physician employed by the National Aeronautics and Space Administration.**

Revised 1/01

December 2006

Appendix B of Chapter 15

SAMPLE PCA AGREEMENT

Physician's Comparability Allowance Service Agreement

1. Authority: 5 USC 5948
2. Under provisions of the above authority, a Physician's Comparability Allowance is authorized for prospective employment as follows:

NASA Center: _____

Geographic Location: _____

Position/Title and Grade: _____

Number of regularly scheduled hours per week if employed less than full time: _____

Annual Allowance Rate: _____

Effective Date: _____

Expiration Date: _____

3. As a federally employed physician, working for the National Aeronautics and Space Administration, I understand that:
 - a. As a condition of accepting payment, I will serve with the National Aeronautics and Space Administration as a physician from the effective date through at least the expiration dates of the agreement, unless the agreement is terminated sooner as indicated below.
 - b. If my employment in the position shown in paragraph 2 is terminated during the period of this agreement at the convenience of the government, but not at my request or as a result of my misconduct, I will be entitled to retain that portion of the allowance earned to the date of termination.
 - c. If my employment in the position shown in paragraph 2 is terminated during the period of this agreement at my

request, or as a result of my misconduct, I will be required to refund the total amount received under this agreement if I have completed less than one year of the agreement. If I have completed one year or more of the agreement, I will be required to refund the amount of allowance earned during the 26 weeks prior to termination. I further agree that assignment at my request to an intermittent or less than half-time (20 hours per week) work schedule shall be equivalent to termination of this agreement at my request.

- d. If, during the period of the agreement, I become eligible for the comparability allowance under a newly announced category, I may terminate this agreement and execute a new agreement reflecting entitlement under the newly announced category, effective on the date of announcement of the newly assigned category. If I exercise this option, I will be entitled to retain that portion of the allowance earned to the date of termination.
- e. The allowance will be paid in the same manner and at the same time as my basic pay. It is considered basic pay for computing retirement entitlement, but not for insurance entitlement or other benefits related to basic pay.
- f. The effective date of the allowance is the beginning of the first pay period that begins after the effective date of this agreement.
- g. The agreement does not in any way commit the government to continue my employment.

4. I agree to the terms and conditions stated above.

Signature of Employee

Date

Typed name, position title, and grade

Requesting Official

Signature

Date

Typed name and title

Center Director Approval

Signature _____ **Date** _____

Revised 1/01

Appendix C to Chapter 15
SAMPLE DOCUMENTATION RECORD
PHYSICIAN'S COMPARABILITY ALLOWANCE PROGRAM

DOCUMENTATION OF RECRUITMENT AND RETENTION PROBLEMS

1. Check the Category of the position:
Category I
Category II
Category III

2. What selection factors, if any, above the minimum required by the GS-602 qualification standard, are used in recruiting for the position?

3. What impact does locale have on the ability to recruit and retain physicians in this category?

4. Are there any required duties that affect the ability to recruit and retain physicians? If so, describe the duties and how they affect the ability to recruit and retain physicians.

5. For the category indicated above, provide the following documentation on recruitment activities:
 - a. Number of current physician positions filled and vacant, and the length of time these positions have been vacant:
Filled _____
Vacant _____
Average length of time positions have been vacant _____

 - b. Physician Losses:
Number of physicians leaving voluntarily during the last year

Reasons for leaving

-
- c. Number of positions filled during the last year.
By scholarship obligated physicians _____
By individuals in loan repayment programs _____
By other means _____
- d. Describe recruitment efforts (area covered, methods, contact made, etc.).
- e. Average number of physician applications that must be screened before qualified candidates can be found _____
- f. Average number of qualified physicians referred for each position filled _____
- g. Interviews:
1. Of those interviewed for each position, how many are found unacceptable _____
 2. What were the reasons for the unacceptability?
- h. Rejections:
1. Average number of physicians who reject an offer of employment for each position filled _____
 2. What were the reasons for the rejection of offers?
 3. Describe your efforts to retain physicians in this category (e.g., changes in working conditions, use of paramedical personnel to assist physicians in routine duties, etc.).
 4. How does the turnover rate for physicians in this category (total personnel losses in relation to employment) compare to the total turnover rate for all positions?
-

5. If any subdivisions for this category are being established, explain the basis for them.

Signature and Title of Individual Providing Information

Date

CHAPTER 16

SUPERVISORY DIFFERENTIALS

16-1. Introduction

This chapter explains the use and calculation of supervisory differentials, and it also describes procedures for granting, terminating, or adjusting them. This was another flexibility added by FEPCA to compensate supervisors who have subordinates not under the General Schedule whose pay exceeds that of the supervisor.

16-2. Authority

- a. Law authorizing supervisory differentials: 5 USC 5755
- b. OPM regulations implementing supervisory differentials: 5 CFR 575.401 to 575.407
- c. NASA policy: Chapter 3 of NPR 3530.1A: Adjusting the Pay of General Schedule Supervisors

16-3. Eligibility

In NASA a supervisory differential may be paid to a GS supervisor if one or more subordinates who are not under the General Schedule would be paid at least 2% more than the supervisor (without rounding up) in the absence of the differential.

Example 16a:

Howard is a GS-14 step 2 supervisor at GRC earning \$73,671. One of his subordinates not under the General Schedule is earning \$75,144, which is \$1,473 more than Howard's salary. 2% of Howard's salary is \$1,473.42. Thus, his subordinate's salary does not exceed Howard's salary by at least 2%, and Howard may not be paid a supervisory differential.

Subordinates must be civilian employees. Military employees and employees of the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration may not be considered when determining whether the pay of subordinates exceeds the pay of a supervisor. Contract employees also may not be considered.

The supervision exercised must be direct technical supervision.

December 2006

A supervisory differential may not be paid on the basis of supervision over a subordinate whose rate of basic pay exceeds the maximum rate for GS-15 step 10 for the scale applicable to the supervisor. This includes locality pay, law enforcement adjustments, or special rates.

Example 16b:

Tom's subordinate is located in Huntsville, but Tom is a supervisor in Washington, DC. If his subordinate earned more than \$139,774, the rate for GS-15 step 10 in the Washington, DC locality pay area, a supervisory differential could not be paid. If Tom were in San Francisco, a supervisory differential could not be paid if the subordinate earned more than \$143,000, the maximum rate for San Francisco. The fact that his subordinate is in Huntsville is irrelevant. It is based on the scale applicable to Tom.

16-4. Comparing Pay Between the Supervisor and Subordinate

When comparing pay rates between the supervisor and subordinate, include the following payments made to the supervisor:

- a. Basic pay, including retained pay;
- b. Locality pay, special salary rate supplement, or special law enforcement adjustment;
- c. Staffing differential (NOTE: currently, OPM has not published regulations to implement this provision of FEPCA);
- d. Retention allowance;
- e. Annual standby or administratively uncontrollable overtime pay;
- f. Availability pay; and
- g. Other continuing payments, except do not include Sunday, night, or holiday pay and do not include a hazardous duty differential.

When determining how much the subordinate is being paid, include:

- a. Basic pay (except night or environmental differential or a retained rate of pay);
- b. Locality pay or law enforcement adjustment;
- c. Other continuing payments(except Sunday or holiday pay or retention allowances); and

d. Annual standby or administratively uncontrollable overtime.

Example 16c:

Teri is a GS-13 step 1 supervisor at KSC earning \$74,074 per year. She has a subordinate not under the General Schedule earning \$78,000 per year. A supervisory differential may be paid.

16-5. Requirement for Higher-Level Approval

All requests for a supervisory differential must be in writing and must be approved in writing by a higher-level official than the requesting official.

16-6. Computation and Payment of Supervisory Differential

A supervisory differential may not cause the supervisor's pay to exceed the pay of the highest paid subordinate by more than 3% when compared as described in section 16-4. As explained in section 16-3, supervisory differentials will only be considered if the subordinate's salary exceeds the supervisor's by 2%.

Putting these two requirements together, supervisory differentials when added to the rest of the supervisor's pay initially will be at least 102% of the supervisor's salary and will not exceed 103% of the subordinate's pay.

Example 16d:

Back to our friend, Teri, earning \$74,074 and her subordinate earning \$78,000. 3% of \$78,000 is \$2,340, so Teri may not be paid a supervisory differential which would cause her salary to exceed \$80,340 (\$78,000 plus \$2,340). Thus, the highest supervisory differential that she can be paid is \$6,266 per year (\$80,340 minus \$74,074). 102% of her salary of \$74,074 is \$75,555, so the minimum supervisory differential that she can be paid in NASA is \$1,481 (\$75,555- minus \$74,074).

A supervisory differential is paid at the same time and in the same manner as basic pay. It is paid at an hourly rate for each hour that the supervisor receives basic pay. Thus, in our example, if Teri were paid the maximum permitted supervisory differential of \$6,266, she would be paid it at an hourly rate of \$3.00 (\$6,266 divided by 2087). Each pay period, she would receive a supervisory differential of \$240 (\$3.00 times 80). The \$240

would be included her paycheck and would not be paid as a separate item.

16-7. Termination and Adjustment of Supervisory Differentials

Centers may terminate a supervisory differential at any time even if the conditions that led to its approval still exist. In other words, even if the subordinate is still earning more than the supervisor, a Center might decide that to save money, it will no longer pay a differential.

If the conditions to justify a supervisory differential no longer exist, the Center must terminate the supervisory differential within 30 calendar days.

There is one exception. The supervisory differential does not have to be terminated where the subordinate's salary no longer exceeds the supervisor's salary by at least 2%. This is because the 2% requirement is a NASA requirement. OPM regulations permit the use of a supervisory differential even if the subordinate's salary exceeds the supervisor's by less than 2%. Therefore, even if the 2% gap is no longer maintained, the differential may continue. However, it must be terminated when the subordinate's salary no longer exceeds the supervisor's salary.

Even if the conditions justifying the supervisory differential still exist, it must be reduced at any time it causes the supervisor's earnings to exceed the earnings of the highest paid subordinate by more than 3%. This also must be done within 30 calendar days.

Example 16e:

Back to our friend Teri. When Teri receives a WIG to step 2, and a QSI to step 3 her salary becomes \$79,012. Now she is earning more than her subordinate, who is earning \$78,000. Therefore, the supervisory differential must be terminated. This is true even though it means that Teri will actually earn less money. She will now earn \$79,012 instead of \$80,340, which she would have been earning if she had been paid the maximum permissible supervisory differential.

In addition to the adjustments required by the regulations and described above, Centers may adjust the supervisory differential no more than one time in a 12-month period.

Example 16f:

Instead of having been paid the maximum supervisory differential, Teri was paid a supervisory differential which when combined with her salary equaled \$79,000. Six months later, it was raised to \$80,000. However, it would not be permissible to adjust it again within the same 12-month period. Of course, once her salary increases to a rate above her subordinate as described in Example 16e, the differential would be terminated.

The reduction or termination of a supervisory differential is not an adverse action, and it generally is not appealable. However, under the Whistle Blower Protection Act an employee has the right to claim that it was a prohibited personnel practice and done, for example, in retaliation for whistle blowing.

16-8. Relation of Supervisory Differential to Basic Pay

The supervisory differential is a discretionary payment and is included when determining whether an employee's compensation will exceed the level I pay cap explained in Chapter 17. A supervisory differential may not be considered basic pay for any purposes.

16-9. Records

Centers must maintain records of all requests for supervisory differentials, actions taken on those requests, terminations, and adjustments. The records must show the basis for each supervisory differential and must show the consideration given to other supervisors in the same organizational unit as the supervisor for whom a differential was approved.

Chapter 17

PAY CAPS

17-1. Introduction

This chapter explains various pay caps including the caps on GS positions, locality pay rates, SES and other high-level positions, premium pay, and the aggregate limit on total compensation. Pay caps shown are those for the year 2006.

17-2. Authority

- a. Law, pay cap for GS positions 5 USC 5303
- b. Law, pay cap for Locality rates: 5 USC 5304
- c. Law, pay cap for special rate positions: 5 USC 5305
- d. Law, aggregate limit on compensation: 5 USC 5307
- e. Law, pay cap for administratively determined rates: 5 USC 5373
- f. Law, pay for critical positions: 5 USC 5377
- g. OPM Regulations concerning limits on aggregate compensation: 5 CFR 530.201 to 205
- h. OPM Regulations concerning premium pay limitations: 5 CFR 550.105 to 107

17-3. Level V Cap for the General Schedule

Rates of the basic General Schedule, excluding locality pay or special rate supplement, may not exceed Level V of the Executive Schedule. For many years this created serious compression problem with respect to the basic General Schedule. However, in 2006, the top step of GS-15 is \$118,957, and Level V of the Executive Schedule is \$133,900.

17-4. Locality Pay Caps

The locality pay caps are discussed in Chapter 5. The GS rate plus the locality pay adjustment may not exceed Level IV of the Executive Schedule, which in 2006 is \$143,000.

17-5. Caps on Premium Pay

GS employees may not receive salary plus premium pay in excess of GS-15 step 10 or level V of the Executive Schedule, whichever is higher, in a pay period. The rate used is the employee's base salary plus locality pay or the employee's special rate if one is being paid. Premium pay includes

those payments authorized under 5 CFR 550 such as standby pay, administratively uncontrollable overtime, other overtime payments, availability pay, Sunday pay, holiday pay, and night differential pay. If the employee accepts compensatory time in lieu of overtime, it still counts as overtime when calculating the limit.

Example 17a:

Dick is a GS-15 step 8 employee in Cleveland earning \$130,248 per year. His biweekly rate is \$4,993 (\$130,248 divided by 2087 times 80). The biweekly rate for GS-15 step 10 is \$ 5,263 (\$137,288 divided by 2087 times 80). The difference between Dick's salary and the maximum is \$270 (\$5,263 minus \$4,993). If overtime were to be approved for Dick, it would be paid at a rate of 1.5 times the rate for the first step of GS-10 step 1, or \$34.87 per hour or his basic rate of pay of \$62.41 per hour, whichever is higher. \$270 divided by \$62.41 equals approximately 4.3 hours, so Dick could not work more than that amount of compensatory time even though he would not actually be paid the overtime.

In emergency situations Centers may permit an employee to exceed the GS-15 step 10 limitation in a biweekly pay period, provided that it is not exceeded for the calendar year (January 1 through December 31). An emergency is defined as a direct threat to life or property. If an emergency is determined to exist, it must be documented in writing.

Example 17b

In our above example, Dick's agency could decide that an emergency exists and pay him \$500 of overtime for several pay periods in a row even though this would put him over the GS-15 maximum for those pay periods. However, Dick could not be paid more than \$7,040 of overtime (or 112 hours of compensatory time off) for the whole year because on an annual basis, the difference between his salary and the rate for GS-15 step 10 is \$7,040 (\$137,288 minus \$130,248).

The maximum limitations discussed here do not apply to overtime that the Agency is required to pay under the Fair Labor Standards Act (FLSA). NASA must pay all overtime required by FLSA.

Chapter 10 discusses the special maximum rates for law enforcement officers.

17-6. Level IV Cap for Pay Set by Administrative Action

Agencies including NASA often have the authority to set pay for certain positions by administrative action. NASA Excepted positions are examples of this situation. In these situations unless otherwise provided, the pay may not be set above level IV of the Executive Schedule, which is \$143,000 in 2006. However, NASA has authority under the NASA Workforce Flexibility Act of 2004 to set pay by administrative action up to level III of the Executive Schedule for appointments under the NASA Excepted authority.

17-7. Level I Aggregate Pay Cap

17-7-1. Basic Requirement

5 USC 5307 provides that the aggregate pay for employees in the executive branch of the Federal government may not exceed Level I of the Executive Schedule, which is \$183,500 in 2006. The period of time that is the basis for determining an employee's aggregate pay is the calendar year from January 1 to December 31, regardless of when the employee enters on duty. The limitation concerns money actually received by the employee during the calendar year. Thus, even if the pay period ends before the year is over, the compensation would not be counted if the payday is not until the next year.

17-7-2. Coverage

Unless an exception is provided, the Level I pay cap applies to all employees of the executive branch. It includes the following types of pay:

- a. Basic pay
- b. Locality pay, continued rates of pay, and law enforcement adjustments
- c. Premium pay
- d. Performance and incentive awards
- e. Recruitment and relocation bonuses
- f. Retention allowances
- g. Supervisory differentials
- h. Post differentials
- i. Danger pay
- j. Allowances including physicians comparability allowances and environmental allowances for employees stationed outside the continental United States
- k. Continuation of pay because of an on the job injury (but not workers compensation payments)
- l. Any other compensation similar to the types described above unless specifically excluded

- m. Extended assignment incentives
- n. Lump-sum payment in excess of aggregate limitation on pay
- o. Redesignation bonus (NASA Flexibility Act)

Pay that an employee is entitled to under FLSA is not included. Back pay resulting from an unjustified or unwarranted personnel action, severance pay, and lump sum annual leave payments are not included.

17-7-3. Exceptions

There are exceptions in law to the Level I pay cap. Physicians paid under Title 38 of the United States Code at the Department of Veterans Affairs can be paid up to \$200,000 per year. Several other agencies including the Public Health Service, the Defense Department, and the Bureau of Prisons have been given authority to pay some of their physicians under Title 38, and they also have this exception.

As explained in Chapter 2, agencies may request approval through OPM and OMB for authorization to pay an employee above Level I for a critical position. The position involved must be extremely critical to the Agency's mission. Only a very small number of these requests have been approved. Also the NASA Workforce Flexibility Act of 2004 provides NASA with its own Critical Pay Authority to set pay up to the level of the pay of the Vice President.

17-7-4. Estimating Annual Compensation

For employees who are being paid high rates of pay, Centers need to review their compensation at the beginning of each year and whenever additional compensation is being contemplated to determine whether the aggregate compensation is likely to exceed Level I for the year. If it appears that it will, there are a variety of actions that the Center must take.

17-7-5. Deferral of Discretionary and Nondiscretionary Payments

In addition to basic pay, there are discretionary and nondiscretionary payments.

Note: For purposes of the aggregate pay limitation, basic pay is the pay authorized for the position including locality pay and special rate supplement and or other similar payments.

Nondiscretionary payments are those payments required by law or regulation that are in addition to basic pay. ***Discretionary payments*** are

those payments that an agency is not required to make. Examples of a nondiscretionary payment would be a PCA if for example, the Agency already authorized it and signed the agreement. An example of a discretionary payment would be a performance award.

If a Center is contemplating making a discretionary payment and determines that it would cause the employee's compensation for the year to exceed level I when added to the estimated aggregate compensation, the Center **must** defer the discretionary payment to the following year. In other words, the Center can approve the action but then must defer the payment. This is true even if at the time the payment would be made, the employee's compensation would not have yet exceeded Level I. The Center may not defer any nondiscretionary payments to permit the payment of a discretionary payment.

Example 17c:

Rose is an SES employee earning \$160,000. She is being paid a PCA of \$20,000 per year. In August, the Agency is contemplating giving her a \$15,000 award. Even though as of August, she has not yet received more than \$183,500 (Level 1 pay cap) in compensation for the year, it is estimated that she will receive \$195,000 by the end of the year if the award is given ($\$160,000 + \$20,000 + \$15,000$ equals $\$195,000$). Therefore, the Agency may not give her the full \$15,000 award at this time. They can give her \$3,500, which when added to her salary and PCA would equal \$183,500, the Level I pay cap. The remaining \$11,500 must be deferred to the following year.

It is rare that it is necessary to defer non-discretionary payments, but it can happen, especially in those years with 27 paydays. Unlike discretionary payments, nondiscretionary payments are only deferred at the time they would actually cause the aggregate compensation to exceed the level I cap—not at the time the Agency first estimates that the cap would be exceeded.

Example 17d.

For purposes of our example, Clarence earns \$6,100 of salary each pay period plus his PCA, which is \$700 per pay period. In a normal year, he would earn \$176,800. Because of the 27th payday, his total compensation would be \$183,600. If the Agency deferred his physicians comparability allowance earlier than the last pay period, his total compensation could be kept from exceeding the pay cap. However, because the PCA is a non-discretionary payment, the Agency need defer only the allowance that would be paid on the 27th payday because that's the only payday where his actual compensation will exceed the cap.

17-7-7. Payment of Deferred Compensation

When compensation is deferred, it must be paid in the following year. When the Agency estimates how much of the deferred compensation it can pay, it only considers it and basic pay. The deferred compensation that is paid counts toward the aggregate limitation in the following year.

Example 17e:

Sam has deferred payments of \$25,000 from 2000. In 2001, his basic pay will be \$122,400, and his nondiscretionary payments will be \$20,000. Even though the total of the deferred compensation, the basic pay, and the nondiscretionary payments will exceed the cap of \$161,200, the total of just the basic pay and the deferred compensation will not. Therefore, the Agency must pay him the \$25,000 in deferred compensation at the beginning of the year.

However, as the year goes on and the nondiscretionary payments cause the cap to be exceeded, those payments must be deferred until 2002.

It is possible that an employee will have compensation deferred every year, but when the employee leaves the Federal government, all the compensation is paid following a separation of at least 30 calendar days. If the employee should return during the same calendar year, all the deferred compensation that was paid must be counted when determining whether the employee will exceed the pay cap.

Example 17f:

Daisy is paid \$25,000 in deferred compensation when she leaves the Federal government in March 2001. When she returns in June, that \$25,000 is counted toward her aggregate compensation. On the other hand, if she left in November, so the compensation was paid before December 31, it would not count when she returns to the Federal government on January 15 of the following year.

If an employee transfers to another agency, the agency that owed the deferred compensation is still responsible for paying it.

If an employee dies, all deferred compensation is immediately paid as part of the account settlement process.

17-7-8. 27th Payday Problems

The 27th payday problem has already been mentioned in this chapter. Because different agencies have different paydays, it will be an issue in different years. In years when NASA has 27 paydays, Centers must review the compensation for highly paid employees and take the necessary steps to deal with the 27th payday problem.

Chapter 18

FEDERAL WAGE SYSTEM (FWS)

18-1. Introduction

This chapter explains the structure of the FWS and the basic pay rules that govern it.

18-2. Authority

- a. Law establishing the FWS: 5 USC 5341 to 5349
- b. OPM regulations for the FWS: 5 CFR Part 532
- c. FWS Appropriated Fund Operating Manual at <http://www.opm.gov/oca/wage/INDEX.asp>

18-3. Structure of the Federal Wage System

The FWS is also known as the prevailing rate system. A prevailing rate employee is a person employed in or under an Agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other person, including a foreman and a supervisor, in a position having trade, craft, or labor experience and knowledge as the paramount requirement.

The three basic pay scales are WG, WL, and WS. WG includes prevailing rate employees who are not wage leaders or wage supervisors. There are 15 WG grades. Each grade has 5 steps. Positions are classified into job families and further divided into series. Grade level progressions vary for the different series. A common progression is WG-5, WG-8, and WG-10. WG-5 would be a helper level, WG-8 would be an intermediate level, and WG-10 would be the journeyman level.

The WL scale includes wage leaders. These employees lead or train 3 or more non-supervisory wage employees, but they do not exercise full supervisory authority.

There are 15 WL grades. Each grade has 5 steps. The WL grade usually corresponds to the highest grade being led, so if the highest grade being led is WG-10, the leader will be a WL-10. The second step of the WL grade is 10% higher than the second step of the corresponding WG grade. For example, if the second step of WG-10 were \$10.00 per hour, the second step of WL-10 would be \$11.00.

Wage supervisors are full supervisors. There are 19 grades, and each grade has 5 steps. The second step of the 19th grade equals the third step of grade 14 on the basic GS scale. The second step of grades 1 to 10 is 30% above the second step of the corresponding WG grade. For example, if the second step of WG-10 is \$10.00 per hour, the second step of WS-10 will be \$13.00. Grades 11 to 19 are set based on a percentage of the difference between the second step for WS-10 and WS-19. The progression is not uniform. For example, WS-11 step 2 equals WS-10 step 2 plus 5% of the difference between WS-10 step 2 and WS-19 step 2. The percentage for WS-12 is 11.5. The percentage for WS-17 is 67.2, and the percentage for WS-18 is 82.8. For example, if WS-10 step 2 equals \$15.00, and WS-19 step 2 equals \$25.00, the difference is \$10. WS-11 step 2 would equal \$15 plus \$.50 (5% times \$10.00) equals \$15.50.

Grades of WS positions are based on an OPM supervisory classification guide, which takes into account a variety of supervisory factors.

18-4. Special Pay Schedules

There are a variety of special wage schedules that have been established for different types of positions. A few of the more common schedules are production facilitation, and printing. There also is an apprentice pay scale, which must be developed by the Center as needed (see below).

Production facilitation includes positions such as planner estimators. Nonsupervisory positions are labeled WD, and supervisors are labeled as WN. There are 11 WD and 9 WN grades. Each grade has 5 steps.

Printing scales have been established for printing jobs in some wage areas in the 4400 job family and the 5330 series. Nonsupervisory positions are labeled as XP. Leader positions are XL, and supervisors are XS. There are the same number of grades as for WG, WL, and WS positions respectively. Each grade has 3 steps. Production facilitation printing positions are XD for non-supervisors and XN for supervisors.

Apprentice positions are in formally established training programs. They are labeled as WT. There are no grades. Rather, there are pay levels depending on the length of the apprentice program. Employees normally move to the next level at 26-week intervals, although agencies can advance employees more quickly. The first level equals 65% of the second step of the journeyman grade (or the first step of WG-1, whichever is greater). However, even if WG-1 step 1 is the first level, the intervals are calculated using the 65% rate as the first level.

Example 18a:

The journeyman grade is WG-11 step 2 with a rate of \$15.00 per hour. The Agency is establishing a 2.5-year apprentice program. The first level will be 65% of \$15.00 (\$9.75). The difference between the entry level is \$15.00 minus \$9.75 (\$5.25). The program is 2.5 years long, so there will be 5 intervals of 26 weeks each. The increase for each interval will be \$5.25 divided by 5 (\$1.05). The intervals will be as follows:

1. \$9.75
2. \$10.80
3. \$11.85
4. \$12.90
5. \$13.95

If WG-1 step 1 were \$10.00, the first interval would be \$10.00, but the other intervals would be the same intervals as shown above. When the apprentice program is completed, the employee is promoted to step 2 of the journeyman grade.

18-5. Wage Areas and the Prevailing Rate

The country is divided into over 100 wage areas. A wage area is a geographic area defined by OPM within which a single set of wage schedules is applied uniformly by Federal installations to covered occupations. A wage area can be a metropolitan area, a county or group of counties, or any other geographic area containing a significant number of wage system employees. Occasionally, OPM will abolish or change wage areas, and these changes are published in the Federal Register.

Within each wage area, a lead agency, usually the Department of Defense is responsible for conducting wage surveys to determine what the private sector is paying blue-collar employees. Wage rates for nonsupervisory schedules reflect the general level of rates paid by private employers in the same wage area for kinds and levels of work performed in the Federal service. Based on these surveys, basic wage schedules covering all FWS employees in the wage area are developed. Thus, the Federal Wage system is different than the General Schedule, which has a basic scale plus locality pay. The wage schedules for a particular wage area are the basic rates. There is no national scale.

Full wage surveys are done every 3 years, and an update or “wage change” survey is done for the alternate years when a full survey is not done. When the results of the surveys are completed, new schedules are issued, and agencies are responsible for adjusting the pay of wage

system employees. Unlike the General Schedule, changes to wage system pay rates are not all done at the same time. They are effective throughout the year depending on the timing of the surveys for the particular areas. OPM posts the new wage schedules on their web site.

In theory, there are no limits on how much wage rates can increase. However, during the past several years, Congress has required that increases in pay rates may not exceed the average increases for General Schedule employees.

Wage surveys will determine the prevailing rate for each grade. The prevailing rate is the second step of the WG grade.

In addition to the basic pay schedules, 5 CFR 532.251 authorizes lead agencies with OPM approval to establish special rate schedules for particular occupations or specialties in the entire wage area or in a particular geographic area. The basis for establishing special rates is similar to the reasons for establishing rates in the General Schedule, for example, significantly higher rates in the private sector or the remoteness of the location. These special rate schedules could just have one rate if that's the pattern in the private sector, but in most cases they will have 5 steps and be arranged in the same pattern as the regular pay schedules.

18-6. Steps and Waiting Periods

The amount of each step is based on the second step of the grade. The first step is 96% of the second step. The third, fourth, and fifth steps are 104, 108, and 112% respectively. This is true for WG, WL, and WS positions.

The waiting period to go from the first to the second step is 26 weeks, 78 weeks to go from step 2 to 3, and 104 weeks to go to steps 4 and 5. An employee must have a satisfactory performance rating to move to the next step. Unlike the General Schedule, there are no procedures to process the denial of step increases. If an employee does not have a satisfactory performance rating, the employee does not receive the step increase.

There are no provisions for quality step increases in the FWS.

18-7. Movements between FWS Positions

When an employee moves between FWS positions, the Agency must determine the nature of the action. If the move is within the same pay schedule, e.g. WG, to WG, the nature of action is determined on the basis of the grade levels. A move to a higher grade is a promotion, and a move

to the same grade is a reassignment. A move to a lower grade is a change to a lower grade.

Movements between different types of wage schedules are based on representative rates. The representative rate for wage system positions is the second step of the grade. If the position or wage schedule has only one rate, that rate is the representative rate.

A movement to a position with a higher representative rate even by just a penny is a promotion, and a movement to one with a lower representative rate even by just a penny is a change to a lower grade.

Example 18b:

Mark is a WG-10 employee. He is at step 3 of the grade earning \$10.40 per hour. The representative rate for the grade is step 2, \$10.00 per hour. If he is moving to a WD position with a representative rate of \$10.01, the action is a promotion, but if the representative rate of the WD position were \$9.99, the action would be a change to a lower grade.

18-8. Movements Between Wage Areas

When employees move between wage areas, generally they are placed in the same grade and step as they were on in the old wage area. However, if the salary in the new wage area is lower, the Agency can use the highest previous rate rule. As explained in section 18-12, if management initiated the action, the employee could be entitled to retained pay.

18-9. New Appointments

When a wage system employee is given a new appointment, the pay is set at the first step of the grade. If the Agency determines that the employee has exceptional qualifications, the rate may be set at a higher step. Unlike superior qualifications appointments under the General Schedule, agencies do not have to establish that the employee would be forfeiting income to accept the federal position. Thus, Centers may make appointments above the first step if they determine that the individual has exceptional qualifications and the higher step is necessary to recruit the employee.

Sometimes, the lead agency will determine that for certain occupations it is necessary that the pay for new appointments be set above the first step. This would be done to enable the Federal government to compete with the private sector. When the wage schedule is issued, it will indicate those

occupations for which new appointments will be paid above the first step. When this is done, all employees in the particular occupation will be paid above the first step.

Agencies may use the highest previous rate rule for wage system employees.

18-10. Highest Previous Rate Rule

The highest previous rate rule (HPR) is generally the same for FWS employees as it is for GS employees, but there are some differences. The HPR should be used when employees move from GS to FWS positions.

OPM's operating manual states that the HPR may not be based on a GS special rate under 5 USC 5305. However, the FWS regulations do not contain this restriction. The introduction to the operating manual states that if the regulations have different requirements from the manual, agencies should follow the regulations. Thus, at this time, in spite of what the operating manual states, Centers may use the dollar amount of a special rate under 5 USC 5305 as the highest previous rate when an employee is moving into a FWS position.

Example 18c:

Elaine is on a GS-6 step 1 special rate position. The regular rate for GS-6 is \$23,820, and her special rate is \$25,408 (\$12.17 per hour). She is moving into a WG 9 position with the following rates: 1-\$11.52 per hour, 2-\$12.00, 3-\$12.48, 4-\$12.96, 5-\$13.44. Since \$12.17 falls between steps 2 and 3, her salary may be set at step 3 of the grade, \$12.48 per hour.

If the highest previous rate was earned in a wage system position, it is the grade and step on the same type of wage schedule in the wage area the employee is moving into. If the actual dollar amount of the earned rate is higher, then the earned rate may be used.

Example 18d:

In 1997, John served for 6 months in a regular rate position at GS-6-4 and then left the Federal government. GS-6 step 4 is his highest previous rate. He is being reinstated to a wage grade position with the same rates as shown in example 18c. In 2000, the rate for GS-6 step 4 is \$26,202. The hourly rate is \$12.55 (\$26,202 divided by 2087). \$12.55 per hour falls between steps 3 and 4 of the FWS grade, so his

Example 18e:

Trish was a WG-10 step 2 employee in wage area A, and she earned \$11.00 per hour. She is moving to a WG-10 position in wage area B with the following rates for the steps: 1-\$10.37, 2-\$10.80, 3-\$11.23, 4-\$11.66, 5-\$12.09. Her HPR would be WG-10 step 2 in wage area B. However, since WG-10 step 2 is only \$10.80 per hour, application of the highest previous rate rule would permit the Agency to pay her at step 3 (\$11.23 per hour) because her salary of \$11.00 per hour in the old area falls between steps 2 and 3 in the new area.

Note: The OPM Operating Manual also states that the dollar rate earned on a special rate authorized under 5 CFR 532.251 as explained in section 18-5 may not be used as the highest previous rate. However, as was explained for special rates under 5 USC 5305, the current OPM regulations do not contain this restriction. Therefore, Centers may use the actual dollar amount of a rate earned under a special FWS schedule.

18-11. Promotions

A promotion is a movement from one grade to a higher grade on the same wage scale (for example, WG to WG or WL to WL) or any movement into a wage system position from another pay scale to a position with a higher representative rate).

When an employee is promoted, the employee must receive an increase equal to 4% of the representative rate of the grade from which the employee is moving.

(Note: This rule only applies to promotions *within* the FWS. It does not apply, for example, if an employee is moving from a GS to an FWS position. In that case Centers should use the HPR as explained in section 18-10.

Example 18f:

Margie is being moved from a WG-10 step 4 position to a WL-10 position. The pay scales are:

WG-10

1-\$9.60 2-\$10.00 3-\$10.40 4-\$10.80 5-\$11.20

WL-10

1-\$10.56 2-\$11.00 3-\$11.44 4-\$11.88 5-\$12.32

Since the representative rate for WL-10 is higher than the representative rate for WG-10, the action is a promotion. When Margie is promoted, she is entitled to an increase equal to 4% of the representative rate for WG-10. The representative rate is \$10.00. 4% of \$10.00 equals \$0.40. Her salary must be at least \$10.80 plus \$0.40, or \$11.20. \$11.20 falls between steps 2 and 3 of WL-10, so her salary is WL-10 step 3 (\$11.44).

When an employee is promoted between wage areas, the Agency must calculate the salary in two ways:

- a. Calculate the promotion in the old wage area and then reassign the employee to the new wage area or
- b. Reassign the employee to the new wage area and calculate the promotion in the new wage area.

The employee is paid the higher salary.

Example 18g:

Clark is on a special pay schedule in wage area A with a single rate for his grade. The rate is \$10.00. He is being moved to a WG-9 position in wage area B. The steps for the WG positions in wage areas A and B are the following:

Wage area A

1-\$9.84 2-\$10.25 3-\$10.66 4-\$11.07 5-\$11.48

Wage area B

1-\$10.08 2-\$10.50 3-\$10.92 4-\$11.34 5-\$11.76

Because Clark is on a one-rate scale, the representative rate is \$10.00. The representative rate for the WG position in area B is \$10.50, so the action is a promotion. Upon promotion, he must receive an increase at least equal to \$0.40. If he is promoted in wage area A, \$10.40 falls between steps 2 and 3, so he is entitled to step 3. He would be entitled to step 3 in wage area B, which equals \$10.92. If he were first reassigned to wage area B and then promoted, he would still be entitled to the \$0.40 increase. \$10.40 would fall between steps 1 and 2 in wage area B, so he would be entitled only to step 2.

Since the first calculation yielded the higher salary, the Agency would use that calculation, and he would be entitled to step 3 in wage area B, which equals \$10.92.

If application of the 4% rule results in a rate which exceeds the maximum rate of the new grade, the employee would be entitled to either the maximum step of the new grade or the current salary which ever is higher. If the employee's current salary is above the maximum rate of the new grade, the employee receives retained pay.

Example 18h:

Grace is earning \$11.00 per hour. Upon promotion, she would be entitled to \$11.44. The maximum rate of the grade to which she is being promoted in another wage area is \$10.95. Therefore, she will be entitled to a retained rate of \$11.00. Under the retained pay regulations, she would then receive 50% of subsequent increases in the rate for the top step of her grade until her retained rate falls within the rate range of the grade at which time she would be placed at the top step of the grade.

18-12. Pay Retention

The rules for retained pay are the same for wage system employees as for GS employees. However, there are a few additional situations under which the employee would be entitled to retained pay.

As explained above, an employee is entitled to retained pay upon promotion if the maximum rate of the new grade is lower than the employee's current salary. Employees are entitled to retained pay if a wage survey results in a reduction in pay. Employees are entitled to retained pay if a management-initiated action causes the employee to have to move to a wage area with a lower rate of pay. If the move were initiated by the employee and not by management, the employee would not be entitled to retained pay, but the Agency could use the highest previous rate rule as explained in section 18-10.

Chapter 19

CORRECTING PAY ERRORS

19-1. Introduction

This chapter explains how to correct pay errors and covers the following topics:

- Obtaining variations to OPM regulations
- Correcting administrative errors
- Waivers of overpayment, and
- Awarding and computation of back pay.

19-2. Authority

- a. Whistle Blower Protection Act: 5 USC 1214
- b. Law, debt Collection: 5 USC 5514
- c. Law, waivers of overpayment: 5 USC 5584
- d. Law, back pay: 5 USC 5596
- e. Law, time limitation for claims: 31 USC 3702
- f. Civil Rights Act of 1991
- g. Transfer of waiver authority from GAO to the Executive Branch: Public Law 104-316
- h. Authority for OPM to grant variations: Civil Service Rule 5.1
- i. OPM regulations concerning back pay: 5 CFR 550.801 to 808
- j. OPM regulations concerning debt collection: 5 CFR 550.1101 to 1110
- k. NASA Delegation Of Authority - To Waive Claims For Erroneous Payment Of Pay And Allowances, Travel, Transportation, And Relocation Expenses And Allowances: NPD 9645.2D
- l. Comptroller General Decision B-191977, August 17, 1979: De facto employment
- m. Comptroller General Decisions B-206014, March 7, 1983 and B-215311, December 4, 1984: Settlement of discrimination complaints
- n. Comptroller General Decision B-236592, August 23, 1991: Liability of certifying officials

19-3. Variations to OPM Regulations

Section 5.1 of the Civil Service Rules authorizes the Director of OPM to grant variations to the strict letter of regulations when they create

unnecessary hardship and practical difficulty. The variation cannot violate the spirit of the regulation and must promote the efficiency of the government and the integrity of the competitive service. OPM may grant a variation to a regulation but unless specifically authorized to do so may not grant a variation to a statutory requirement.

A variation can be granted to *correct an error* or to permit an agency to *take an action*. If NASA is trying to correct an error, usually OPM will grant a variation only if the Agency can demonstrate there are no other alternatives to regularize the situation. The Agency also must demonstrate that but for a technical violation, it could have taken the action. In other words, the Agency must demonstrate that the criteria for taking the action could have been met. Usually the Agency also must describe the hardship that would exist if the variation is not granted; for example, an employee would have to be terminated.

In other situations, an agency can obtain a variation to take an action. The Agency must demonstrate that the action falls within the spirit of the regulation and that it is important to NASA's mission to have the variation granted. Sometimes, this type of variations leads to changes in the regulations. For example, OPM granted several variations to permit the dollar amount of special rates to be used as the highest previous rate, and eventually the regulations were changed to permit this in certain situations, (see Chapter 3).

When a variation is granted, it becomes a precedent, and OPM is supposed to grant similar variations in similar situations. For this reason, OPM will require more documentation and persuasion in a situation where a variation has never been granted before.

Even though a variation sets a precedent, agencies still must request separate variations for similar cases. In other words, a precedential variation is not an authority for NASA to take an action at variance with the regulations without OPM approval. Centers that feel that they have situations that would support variations should contact the Office of Human Capital Management. OPM will consider variations only if they come through Agency headquarters.

When the FPM existed, OPM would publish variations in bulletins. Occasionally, OPM now will include information about a variation on its web site under the subject that the variation concerns. Variations based on compensation issues are at <http://www.opm.gov/oca/pay/html/VPS98-7.HTM>.

Chapters 2, 5, 13, and 17 describe some of the variations that OPM has granted to pay regulations. OPM has granted variations to permit employees to be given superior qualifications appointments above the

first step of their grade after they have entered on duty. In these cases, the agencies were able to demonstrate that they intended to approve the appointments and that the employee accepted the position with the understanding that the higher step would be approved. The failure to approve the appointment prior to the employee's entrance on duty was an oversight or due to an over-zealous manager who did not obtain the necessary approval from the personnel office. It is important to note that in these cases, OPM's variation was not retroactive, so the employee did not receive the higher step until after the variation was approved.

OPM has approved similar variations when recruitment and relocation bonuses were not approved prior to the employee's entrance on duty or relocation to a new commuting area.

19-4. Waivers of Overpayments

5 USC 5584 permits the waiver of overpayments to employees. Before 1996, agencies could waive up to \$1,500, but amounts above that could only be waived by the General Accounting Office. Public Law 104-316 transferred the waiver authority to the Office of Management and Budget, which in turn delegated it to agencies. Agencies now have the authority to waive overpayments of any amount. In NASA, Center Directors and the Assistant Administrator for Institutions and Assets have the authority to waive overpayments of up to \$5,000, and the Associate Administrator for Institutions and Management has the authority to waive overpayments in excess of that amount (see NPD 9645.2D).

Waivers can involve pay and other allowances, and since 1988, travel and transportation payments can be waived too.

It is the intention of the law that waivers should be the exception, not the rule. Waivers are to be granted when collection of the money would be against equity and good conscience. In addition, there cannot be any fraud or misrepresentation. Finally, a waiver will not normally be approved if an employee knew or should have known about the overpayment.

Employees are expected to examine their earnings and leave statements, and they are expected to be aware of any unusual increases in salary. Centers may wish to issue periodic reminders to employees that they have the responsibility of reviewing their earnings and leave statements.

An employee who has health insurance and is overpaid because premiums are not being taken out would normally not have a strong case for waiver. A reemployed annuitant whose salary is not being reduced by the amount of the annuity would not have a strong waiver case because

usually agencies and OPM do a good job of informing annuitants about what happens if they are reemployed.

If an employee is in a situation where the pay is constantly changing because of variations in overtime or other premium pay, this employee might have a better chance of demonstrating that he/she reasonably could not have been expected to realize that an increase in salary was improper.

If the employee makes reasonable efforts to correct a problem and the Agency does not fix it, the case for a waiver is less clear. Clearly the employee realized that there was a problem, and this fact would argue against a waiver. On the other hand, if NASA assured the employee that there was no mistake, and it went on for a long time, there would be a strong case that the overpayment should not be collected. If it only went on for a pay period or 2 before the Agency realized that there was a mistake, it would be hard to argue that collection would be against equity or good conscience.

It certainly would be appropriate for a Center to take into account factors such as an employee's grade, education, or length of service. It would be a more significant hardship to collect \$500 from a GS-2 employee than it would to collect the same amount from a grade 15 employee. An employee who has been in the Federal government for only a few months and has not finished high school might be less likely to recognize a discrepancy in a paycheck than someone with more education and a lot of service.

One interesting situation occurs when an employee who has been erroneously separated is returned to duty. The employee would have to pay back the lump sum payment for annual leave. Many employees have requested that this be waived. The Comptroller General has said that waivers would be appropriate only to the extent that requiring the repayment would create a debt for the employee. In other words, if the lump sum leave payment is less than what the employee is owed in back pay, a waiver would not be appropriate.

Example 19a:

Cliff owes \$9,500 for lump sum annual leave. His back pay equals \$7,500 after deductions. It would be appropriate to waive \$2,000 of the overpayment, which is the difference between \$9,500 and \$7,500.

19-5. Relationship of Waivers to Debt Collection Procedures

5 USC 5514 requires agencies to provide employees with due process (such as a hearing) before collecting a debt by salary offset. Usually these debts result from an overpayment. The debt collection process is usually separate from the waiver of overpayment process. The debt collection process is limited to determining whether in fact the employee incurred the debt and whether the repayment schedule is reasonable. The issues of equity and good conscience normally would not be part of this process. The employee is not entitled to a hearing with respect to a request for a waiver of overpayment.

Even though the two processes are separate, Centers should ensure that there is coordination between staff responsible for them. For example, if an overpayment were going to be waived, there would be no need to spend time and resources on a hearing concerning collection by offset. If as the result of the debt collection hearing, it is determined that the employee does not owe the debt, there obviously no longer would be a need to continue processing a request for a waiver of overpayment.

19-6. De facto Employment Rule

A long line of Comptroller General decisions has explained the de facto employment rule. It provides that if an employee is erroneously appointed or promoted, the employee is entitled to retain compensation earned while in the position. In addition, the employee can retain future benefits such as leave earned while in the position. A rate earned under an erroneous appointment or promotion may not be used as the highest previous rate. Once an Agency determines that a de facto employment situation exists, there is no need for a waiver of overpayment. This is because the employee properly retains the compensation. The de facto employment rule is not a license for an Agency to continue an erroneous appointment or promotion. Once the error is discovered, the Agency must take immediate steps to correct it.

Example 19b:

Paulette is a GS-11 employee and is promoted to GS-12 before having 52 weeks in grade as required by OPM regulations. She is in a de facto employment situation and is permitted to retain the GS-12 compensation. The Agency must either regularize the promotion or get Paulette out of the position. If she now has enough time to meet the GS-11 time in grade requirement, she could remain in the position. Note: As explained below, her de facto service could not be counted as GS-12 service for time in grade purposes, but since she was properly in a GS-11 position, the time could be counted toward meeting the time in grade requirement at GS-11.

Example 19c:

Diane is told that she has been hired into a Federal position. After she works for several weeks, it is determined that the official who told her to report did not have appointing authority and that the action had not been processed by the personnel office. Diane is in a de facto employment situation. She can be paid for her work, and if she has earned any leave, she can retain that. The Agency must properly effect the appointment or remove her from the position.

When an agency determines that a de facto employment situation exists, the employee's official personnel folder should be documented to indicate that there has been an erroneous appointment but that the employee has been in de facto employment status. The documentation should indicate that the employee can retain compensation and that the employee is to receive service credit. However, the erroneous salary may not be used as a highest previous rate, and OPM has determined that de facto service may not be credited toward meeting time in grade requirements or service required for career tenure. These situations can be very complex, and Centers should contact the Office of Human Capital Management if questions arise.

The de facto employment rule does not apply where an action has been taken in violation of an absolute statutory bar. In such a situation, an employee would not be entitled to retain compensation already paid and would not be entitled to be paid additional compensation. However, with respect to compensation that was already paid to the individual, the Agency could consider a waiver of overpayment.

Example 19d:

Randy is hired into a position, but it is later determined that he is not a citizen of the United States. The Agency's appropriations act does not permit it to pay non-citizens. This is an absolute statutory bar. Therefore, Randy is not a de facto employee. He would have to repay compensation that he was paid unless the Agency could waive the overpayment. He cannot be paid any additional compensation. Note: NASA has special statutory authority that permits the employment of noncitizens for some positions. Such appointments have special requirements, and must be approved by the Administrator. It may be possible to regularize such an erroneous appointment. Contact the Office of Human Capital Management.

Example 19e:

Maryanne is hired in violation of the nepotism statute. This is also an absolute statutory bar. Therefore, she would not be permitted to retain compensation unless a waiver of overpayment is obtained, and she may not be paid additional compensation.

Note: In both these situations, a waiver cannot give the Agency authority to pay compensation that had not been paid when the error was discovered. Therefore, there may be some work for which the employees cannot be paid.

19-7. Corrections of Administrative Errors

If a Center makes an administrative or clerical error which results in an employee's pay being set incorrectly, the Center can correct that error. The employee does not have adverse action rights and is not in a de facto employment situation.

Example 19f:

Carmine's step was incorrectly set at 6 instead of 5. He was not entitled to step 6, and the Agency had no discretion to set it at that step. NASA can correct the error and change his step to 5. He is not entitled to adverse action procedures (*Warrin V. DoT*, MSPB SE07528210135, March 11, 1985). If he received pay at step 6, the Agency can consider a waiver of the overpayment.

On the other hand, if the Agency had the discretion to set Carmine's step at 6 and then later changed its mind, the step could not be reduced unless the Agency gave him adverse action rights, and it would be unlikely that such a reduction in pay would be sustained by a third party.

Example 19g:

A clerk in the personnel office inadvertently keyed Anne's promotion to GS-9 instead of GS-8. Since GS-9 was not authorized, the Agency can correct the action and set Anne's grade at GS-8 without using adverse action procedures. If she received any pay at the GS-9 level, the Agency can consider waiving the overpayment although if the Agency informs Anne of the error immediately, waiver would probably not be appropriate. On the other hand, if Anne is promoted to GS-9, and it is later determined that she does not meet qualification requirements, the Agency would have to use adverse action procedures to demote her. She could retain any compensation earned under the de facto employment rule. The only exception would be if the promotion was done in violation of an absolute statutory bar. In that case, the action could be canceled without using adverse action procedures (*Garcia V. Air Force*, MSPB NY07528090160, November 2, 1983).

19-8. Back pay

19-8-1. Basic Entitlement

Back pay, interest, and attorney fees are authorized by 5 USC 5596 and 5 CFR 550 subpart H when an appropriate authority determines that an employee has suffered an unjustified or unwarranted personnel action.

19-8-2. Unjustified or Unwarranted Personnel Actions

An unjustified or unwarranted personnel action can be an act of commission or omission that resulted in the denial, withdrawal, or

reduction of pay, allowances, differentials, or other benefits. Examples can include: improper removals or suspensions; denial of overtime in violation of a collective bargaining agreement; non-selection; denial of an award or other payment that an appropriate authority determines the employee is entitled to; or denial of a promotion under certain circumstances.

Promotions can be somewhat complicated. At one time, it was simple. Promotions could not be retroactive, and employees could not receive back pay. As the result of a variety of court and Comptroller General decisions, this issue is less clear-cut. If a promotion is denied as the result of prohibited discrimination, the employee can be retroactively promoted and will receive back pay. If an arbitrator or other competent authority determines that an employee is denied a promotion in violation of a collective bargaining agreement, the employee can receive a retroactive promotion and back pay.

If an employee is denied a promotion in violation of a non-discretionary provision of a collective bargaining agreement or Agency policy, the promotion would be retroactive, and the employee would be entitled to back pay.

If there were no non-discretionary Agency policies or collective bargaining provisions, the Agency would have no authority to make a retroactive promotion, where, for example, the action was lost in the personnel office before the appointing officer approved it. On the other hand, if the action were lost after the appointing officer approved it and not keyed in for a few weeks, the employee would be entitled to a retroactive promotion. This is because for back pay purposes, the approval by the appointing officer is considered to be the final discretionary step. At that point the processing of the action becomes non-discretionary.

Example 19h:

Tammy is a member of a bargaining unit whose agreement provides that when an employee meets the requirements for a career ladder promotion, the employee must be promoted by the next pay period. Tammy met the requirements on December 25, 1999, and the next pay period began on January 2, 2000. Because the personnel action was lost, it was not approved, and she was not promoted until February 13. Because there is a non-discretionary policy, she is entitled to be promoted retroactive to January 2. If the bargaining agreement provision did not exist, there would be no authority to give her the retroactive promotion.

If promotion cases arise, Center staffing and labor relations specialists should be consulted to determine the current NASA policies and/or applicable collective bargaining agreement provisions.

If an employee's position is upgraded as the result of a successful classification appeal, the employee is not entitled to a retroactive promotion (*United States V. Testan*, 424 U.S. 392). On the other hand, if after the classification decision, the Agency fails to effect the decision, the employee would be entitled to a retroactive promotion back to the implementation date required by the decision.

Example 19i:

Victor files a classification appeal on April 1, 1999, to be upgraded to GS-12. On December 1, 1999, OPM issues a decision upgrading his position to GS-12 to be effected no later than January 2, 2000. The Agency does not effect the action until February 27, 2000. Victor is entitled to a promotion retroactive to January 2, 2000.

19-8-3. Requirement to have been ready willing and able to work

To be entitled to back pay, an employee must have been ready, willing, and able to work. This usually comes up when there has been a separation. If the employee was physically incapacitated, the employee would not be entitled to back pay. However, the employee must be given the opportunity to use sick or annual leave if there is leave to the employee's credit and conditions are satisfied for approval. If an incapacitation would not have existed but for the erroneous separation, the employee must be given the back pay regardless of any incapacitation. In one case, an employee was injured on a job with a private sector company that he obtained during the period of erroneous separation. MSPB ruled that he was still entitled to back pay because he would not have been injured if not for the erroneous separation.

If an employee is in jail during a period of separation, the Agency need not pay back pay because the employee could not have worked during that period. Depending on local policy, it may or may not be appropriate to permit the employee to use annual leave during the period of incarceration.

19-8-4. Authority to Award Back Pay

An appropriate authority can award back pay. This includes courts, OPM, MSPB, EEOC, FLRA, the Office of Special Counsel, arbitrators, and NASA officials delegated decision-making authority.

19-8-5. Time Limits for Back Pay

Back pay can result from a variety of administrative or judicial processes such as grievances, MSPB appeals, or complaints of discrimination. Each of these processes has its own time limits. Generally if an employee does not meet a time limit, the case cannot go forward, although there may be situations where a late filing is excused.

There are other claims for back pay that are not tied to any other process. For example, an employee not covered by a collective bargaining agreement could file a claim for standby pay directly with the Agency. In these situations, the time limit is governed by 31 USC 3702. The claim must be filed with the Agency within 6 years of the time when the event giving rise to the claim took place. If the claim is filed late, the Agency has no authority to waive the 6-year time limit. Centers should establish procedures for accepting claims including designating receipt points for claims for back pay. This will avoid disputes concerning whether a claim was filed timely. Once the claim is filed, the clock stops, and the employee may be paid for the entire period beginning 6 years before the date on which the claim was filed until it is decided, regardless of how long the decision process takes.

Some laws have their own filing deadlines. For example, most claims filed under the Fair Labor Standards Act must be filed within 2 years (3 years for willful violations).

Example 19j:

Beginning on January 1, 1992, Holly believes that she should be entitled to annual standby pay, but she does not file a claim with NASA until January 2, 2000. On November 1, 2000, NASA determines that she in fact was entitled to standby pay for the entire period. However, she may only be paid from the period beginning on January 2, 1994 because that is 6 years prior to the date she filed her claim. She may not be paid for the period between January 1, 1992 and January 1, 1994, because that was before the 6-year deadline.

19-9. Settlement Agreements

Agencies may enter into settlement agreements to settle back pay claims or other cases which could result in back pay. At one time there was a question whether agencies could award back pay on the basis of settlement agreements in which the Agency did not admit wrongdoing. The issue has been clearly decided by OPM, GAO, and other third parties.

Even without an admission of wrongdoing, a settlement agreement can provide the authority to award back pay. Centers should never enter into a settlement agreement that has not been reviewed by their Office of Chief Counsel.

There are many types and forms of settlement agreements, but for our purposes, it would be useful to divide them into two categories. The first includes those agreements where the Agency is entering into the settlement agreement totally under its own authority. Although a third party may be involved, the third party has no authority to require that anything be in the agreement which is beyond the Agency's authority. This is very important because sometimes third parties will try to get an Agency to agree to something for which there is no authority. If the agreement is challenged, the fact that the third party was involved will be of no help to the Agency.

The other category of agreement includes those agreements where the third party is a party to the agreement and in effect is using the agreement to issue a decision. A common example is an agreement where an MSPB judge is a party to the agreement. If the agreement is entered into the record by the judge, it actually becomes a MSPB decision. Thus, even if it has a provision that the Agency normally would not have the authority to implement, the agreement can be the authority to implement it. The Comptroller General has ruled that once an agreement becomes a final MSPB decision, GAO will not question its propriety. Generally settlement agreements negotiated under the auspices of Federal judges also would provide agencies all the authority they need to implement provisions that otherwise might be questionable. Under recent EEOC regulations, EEOC judges now have the authority to issue decisions, and therefore, settlement agreements that they approve now can have the force of an EEOC decision.

The above discussion should not be taken as an endorsement of Centers entering into improper agreements. If an agreement is proposed which violates pay laws or regulations, personnel officials should be sure that Agency officials negotiating the agreement, the third party and the appellant are aware of this fact. Centers having questions should contact the Office of Human Capital Management or the Office of General Counsel. In one case involving a settlement of an EEO case, GAO did find a certifying official liable for funds that he should have known the Agency had no authority to spend.

OPM will not honor settlement agreements that violate retirement and other laws. For example, OPM will not honor an agreement that alters the formula for computing an employee's annuity.

Generally a settlement agreement may not provide an employee more than could have been obtained had the unwarranted or unjustified personnel action not been taken.

Example 19k:

Judy was separated. To settle the case, she asked for \$8,000. At the time the agreement was being negotiated, she would have been entitled to only \$5,000 of back pay. Therefore, an agreement to give her \$8,000 of back pay would have been improper.

Example 19l:

Jerry was demoted for misconduct. To settle the case, he asked for retained pay at the lower grade. It would be improper for an Agency to agree to this request because there is no authority to award retained pay in a case involving misconduct. However, in this real case, the MSPB judge pressured the Agency to sign the agreement, and it was implemented. As a sidelight, the employee continued to be a problem employee, and the Agency was forced to take additional disciplinary actions.

An employee who is awarded back pay is entitled to interest. If an Agency uses the term “back pay” in a settlement agreement, then it will be liable for interest. In one case the agreement had a separate section that said that interest would not be paid. However, when the MSPB enforced the agreement, it said that since back pay normally includes interest, it would interpret the provision concerning interest to mean that the employee would not receive interest payments beyond what would be required by the Back Pay Act. If a Center does not want to pay interest, the best approach is to agree on a specific sum of money rather than using the term “back pay.”

19-10. Compensatory and Consequential Damages

Until a few years ago, life was relatively simple when determining the remedy for an unjustified or unwarranted personnel action. The employee would be entitled to back pay and nothing more. Then the Back Pay Act was amended to provide for interest. The Civil Rights Act of 1991 provided for compensatory damages, and the Whistle Blower Protection Act was amended to provide for consequential damages in some cases.

Under the Civil Rights Act of 1991, an employee who prevails in a discrimination complaint may be awarded ***compensatory damages*** up to \$300,000. Compensatory damages can be pecuniary or non-pecuniary. For example, if an employee can demonstrate that the action resulted in additional medical expenses, compensatory damages can include these expenses. If the employee can demonstrate pain and suffering, compensatory damages can be awarded for that.

Compensatory damages are not only applicable to cases under the EEO complaint process. They are applicable in other cases where discrimination is a component, for example, a mixed case in front of the MSPB. They may be awarded as part of a settlement agreement. They are not applicable where the only discrimination alleged is age discrimination.

Consequential damages are damages resulting from the action but which may not be part of back pay. For example, if an employee is separated and has to spend money on a private health insurance plan, the money spent would be consequential damages. In most cases, consequential damages may not be awarded, but in cases involving prohibited personnel practices such as whistle blowing, they may be awarded.

19-11. Attorneys' Fees

The Back Pay Act and other statutes authorize attorney's fees for prevailing parties. They also can be paid as part of settlement agreements. Centers should consult with the Office of General Counsel if the issue of attorney's fees is raised.

19-12. Computation of Back Pay

19-12-1. Gross Back Pay

Once it is determined that an employee is entitled to back pay, the Agency must first determine the gross amount of pay that the employee would have been entitled to if the unjustified or unwarranted personnel action had not taken place. For example, the employee is entitled to receive within grade increases. If the position has annual standby pay, administratively uncontrollable overtime, or availability pay, the employee must be paid that. If the employee regularly worked overtime, the Agency must pay the employee for that overtime. This can be figured either by examining how much overtime the employee was working prior to the action or using the average number of hours that other similarly situated employees worked during the period of the unjustified or unwarranted personnel action.

Example 19m:

Victoria was separated on January 15, 1998. On February 15, 2000, it was determined that the separation was erroneous. Therefore, she was entitled to back pay from January 15, 1998 to February 15, 2000. If she had not been separated, she would have been due within grade increases on September 7, 1998, and September 8, 1999. These increases must be included in the computation of her back pay. Prior to her separation, she was averaging 3 hours of overtime per week. On January 1, 1999, the division director issued a directive eliminating all overtime for employees in her unit. It would be reasonable for the Agency to include in her back pay 3 hours of overtime per week until January 1, 1999, and not pay any overtime after that date.

If an employee was an intermittent employee, back pay can be determined either by using the average number of hours the employee worked before the erroneous personnel action or using the average number of hours similarly-situated intermittent employees worked.

In addition to back pay, the Agency would be responsible for some other losses suffered by the employee. For example, the Thrift Board has issued regulations that require the Agency to make up for money not earned. This is in addition to the matching contributions that the Agency must make. The Agency also must make other matching contributions such as to the retirement fund and for health and life insurance.

19-12-2. Deductions from Back Pay

Once the gross amount of back pay is determined, the Agency must make deductions from the gross back pay amount.

a. Outside earnings

The first item to be deducted is outside earnings. For this purpose, outside earnings are those that replaced the income that the employee lost because of the unjustified or unwarranted personnel action. Earnings that the employee had before the erroneous separation are not to be deducted.

Example 19n:

Constance had a part-time job of 20 hours per week in a private company before her erroneous separation from the Federal government. She earned \$200 per week on this job. This amount is not to be deducted from her back pay.

On the other hand, if she increased her hours to 40 while she was separated from the Federal government and earned \$400, the Agency would deduct \$200 per week from her back pay award. \$200 is the difference between what she was earning before the separation and what she earned after the separation.

If an employee had expenses associated with outside earnings, those expenses must be deducted from the amount by which the back pay is reduced. Taxes that the employee may have paid may not be deducted from the earnings.

Example 19o:

Robert did some consulting after he was erroneously separated. He earned a total of \$5,000, but he had \$1,000 of expenses associated with the consulting work. He also paid \$500 in taxes. In this case, \$4,000 (\$5,000 minus \$1,000) would be deducted from his back pay. The \$500 of taxes may not be deducted from the outside earnings.

The Court of Claims has ruled that an employee has an obligation to attempt to mitigate damages by trying to find outside work during a period of a separation. In theory, if an employee does not do this, an Agency could deduct wages that the employee could be assumed to have earned from the back pay award. However, in practice, it's very difficult for an Agency to show that an employee did not mitigate damages and to establish how much should properly be deducted. Most agencies do not attempt to apply the mitigation requirement when calculating back pay.

b. Erroneous payments

After deductions for outside earnings are made, the Agency must deduct erroneous payments. These usually occur when an employee has been

separated. Erroneous payments are to be deducted in the following order:

1. Annuity payments made to the employee
2. Refund of retirement contributions
3. Severance pay, and
4. Lump sum annual leave payments.

1. **Annuity payments.** An employee may not receive both back pay and annuity payments, so the Agency must deduct the amount of annuity payments and return them to OPM. However, the Agency does not include in the deduction the amount of health and life insurance payments that OPM deducted from the annuity. OPM will take steps to have these returned from the carriers. The Agency then must deduct the health and life insurance premiums from the actual back pay award.

If taxes have been withheld from the employee's annuity, the amount that the Agency deducts from the back pay award is not reduced by the amount of the taxes. It will be up to the employee to settle with the IRS or state with respect to any refund of taxes.

Example 19p:

Ross was separated and retired. His annuity was \$600 per month, and his health and life insurance payments totaled \$75. \$100 of Federal and state taxes was withheld each month. The Agency must deduct \$525 per month (\$600 minus \$75) from the back pay award and forward that amount to OPM. The Agency does not take into account the \$100 per month that was withheld for taxes. The Agency deducts the \$75.00 that he paid in life and health insurance premiums from the back pay award and forwards that as it would other health and life insurance premiums. It's a roundabout way, but it must be done this way, so OPM can keep its books straight.

2. **Retirement contributions.** If the employee obtained a refund of the retirement contributions, the Agency must deduct the amount from the back pay award and forward it to OPM. The employee does not have the option of keeping the refund and just not receive credit for the service toward retirement.

The employee may request a waiver in order to retain annuity or refund payments that were made to him. The employee must send a waiver request to OPM, not NASA, because only OPM would have

the authority to grant the waiver. In most cases a waiver will not be granted unless the employee can show a significant hardship.

3. Severance pay. If an employee received severance pay, the amount of the severance pay must be deducted from the back pay.

4. Lump sum annual leave payment. If the employee received a lump sum payment, the amount of that payment must be deducted from the back pay. The employee does not have the option of keeping the money and not having the leave credited.

It might be appropriate to waive the deduction of severance pay and/or the lump sum leave payment only to the extent that the deductions would put the employee in debt. NASA has the authority to make this determination (see section 19-4).

Example 19q:

Vince is entitled to \$7,000 of back pay. The severance pay and lump sum leave payment received by him totaled \$8,000. If the Agency waives any amount, it would be appropriate only to waive \$1,000, the amount by which the total of the lump sum payment and severance pay exceeded the back pay.

d. Employee benefits contributions

The Agency must deduct retirement contributions (including social security, as applicable) from the full amount of the employee's back pay that would be subject to retirement contributions.

Example 19r:

Glenda was entitled to \$10,300 of back pay. \$10,000 of the award was regular salary, and \$300 was overtime. She earned \$1,000 from outside employment obtained during the separation. She is covered by the CSRS. NASA would be required to deduct \$700 from the back pay award. (This assumes a CSRS rate of 7% during the period of back pay. For several years that rate has been slightly higher, and the higher rate would be used if in effect during the period of back pay). Because \$300 was for overtime and retirement deductions are not calculated on overtime, this amount is subtracted from the \$10,300. Even though the \$1,000 will be deducted from Glenda's eventual back pay award, it is not deducted when calculating her retirement contributions.

Note: As explained above, NASA is required to pay the matching contributions to the retirement fund, but they have no affect on the back pay award.

The Agency is required to deduct health insurance contributions from the back pay award if the coverage continued. The employee has the option of canceling coverage during the period, but the employee should confer with the Center's benefit's specialist to determine what effect cancellation will have on future entitlements.

Life insurance deductions are not made unless death or accidental dismemberment occurred between the removal and the back pay award in which case deductions are made.

e. Unemployment compensation

If an employee received unemployment compensation during the separation, NASA must advise the state that paid the compensation that the employee is not entitled to the compensation. It will be up to the state to decide whether to collect the money from the employee. Some states do not collect it.

f. Taxes

NASA is required to withhold taxes from the gross amount of back pay minus the earnings from outside income. This may result in the employee having more taxes withheld than he/she owes, but it is up to the employee to obtain any refunds to which he/she may be entitled.

19-13. Restoration of Annual Leave

Because the lump sum annual leave payment is deducted from the employee's back pay award, the annual leave must be restored to the employee. Often this results in the employee having more than the maximum carryover. A separate leave account must be established for the excess leave. If a full-time employee has 416 or fewer hours beyond the maximum, the employee must use that leave by the end of the second full leave year following the year in which the leave is restored. For every 208 hours or portion thereof beyond 416, the employee has an additional year to use that leave. For part-time employees, the cutoff for the first 2 years is leave equal to or less than 20% of the employee's tour, and it's 10% for each year after that.

Example 19s:

On March 1, 1998, David was returned to duty, and he had 870 hours of annual leave restored to him. His maximum carryover is 240 hours. The amount in excess of 240 is 630. He must use 416 hours by the end of the year, 2000. He must use the next 208 by the end of the year 2001, and he must use the remaining 6 by the end of the year 2002.

Example 19t:

Dorothy is a part-time employee with a tour of duty of 20 hours per week. She is restored to duty on March 1, 1998. She has 500 hours of leave restored. Her maximum carryover is 240. She has excess leave of 260 hours. 20% of her annual hours is 208. She must use 208 hours by the end of the year 2000 and 52 hours by the end of 2001.

19-14. Computation of Interest

For actions that became final on or after December 22, 1987, employees are entitled to be paid interest. Interest is calculated on the gross amount of back pay minus outside earnings. The interest is computed beginning on the first day the employee would be entitled to the payment. Usually this would be a payday. It is compounded using rates that are adjusted each quarter by the Department of Treasury. OPM usually puts a list of rates on its web site at <http://www.opm.gov/oca/pay/backpay/backpay.asp>

Agencies must issue interest payments within 30 days of the date on which the accrual of interest ends. Another way of saying this is that the Agency can stop calculating interest as of 30 days before the payment is made. For example, If the payment is made on March 31, interest accrual would stop on March 1; but if the payment is delayed, the Agency must recalculate the interest. When interest is calculated, it is compounded. In most situations, the payroll office will calculate the interest, and Centers do not have to make these calculations.

In 1988, OPM issued Federal Personnel Manual Letter 550-78, which explained how to compute interest. Although the FPM has been eliminated, the instructions contained in this letter are still accurate and may be helpful.

19-15 Judgment Fund

Background

Prior to 1956, most judgments against the United States could not be paid from existing appropriations, but required specific congressional appropriations for payment. In 1956, Congress enacted a permanent, indefinite appropriation ("the Judgment Fund") for the payment of final judgments which were "not otherwise provided for." This fund was intended to provide a mechanism that would alleviate the procedural burdens of judgment payment, allow for prompter payments, and reduce the assessment of interest against the United States (where such was allowed by law) during the period between the rendering and payment of an award. In 1961, Congress modified the law to allow payment from the fund of Justice Department compromise settlements of actual or imminent litigation, as well. The appropriation is found at 31 U.S.C. 1304.

Overview and functions

Basically, the Judgment Fund is available for most court judgments and Justice Department compromise settlements of actual or imminent lawsuits against the government. Congress has added a number of administrative claim awards (settlements by agencies at the administrative level, without a lawsuit).

The Judgment Fund has no fiscal year limitations, and there is no need for Congress to appropriate funds to it annually or otherwise. Moreover, disbursements from it are not attributed to or accounted for by the agencies whose activities give rise to awards paid. Absent a specific statutory requirement, the agency responsible is not required to reimburse the Judgment Fund.

NO FEAR Act

One of the key provisions of the No FEAR Act requires that agencies reimburse the Judgment Fund for payments concerning violations or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws. Prior to the enactment of the No FEAR Act, agencies were not required to reimburse the Judgment Fund. Congress has created a financial incentive to foster a Federal workplace that is free of discrimination and retaliation.

The No FEAR Act does not change the criteria or process for obtaining payments from the Judgment Fund; it only creates a reimbursement requirement for agencies. In other words, the No FEAR Act does not authorize agencies to make payments directly to employees, former

employees, or applicants for Federal employment that, prior to the No FEAR Act, would have been made from the Judgment Fund. Judgments, awards, or settlements that were eligible for payment from the Judgment Fund before the No Fear Act becomes effective will continue to be paid by the Judgment Fund.

As noted, however, the No FEAR Act requires agencies to reimburse the Judgment Fund for payments made in connection with 28 U.S.C. 2414, 2517, 2672, 2677 or with 31 U.S.C. 1304. OPM interprets the No FEAR Act to apply to any payment from the Judgment Fund on or after October 1, 2003, for violations or alleged violations of Federal discrimination laws, Federal whistleblower protection laws, and/or retaliation claims arising from the assertion of rights under these laws.

The administrator of the Judgment Fund is the Financial Management Service (FMS), the Department of the Treasury. The timeframe for agency reimbursement begins upon written notice by FMS to the agency's Chief Financial Officer (CFO) that a payment from the Judgment Fund has been disbursed.

In order to initiate payment from the Judgment Fund, FMS forms 194, 196 and 197 must be completed and submitted to FMS. These forms and instructions on completing them can be found at the FMS website at <http://www.fms.treas.gov/judgefund/index.html>. The NASA Shared Services Center (NSSC) completes the computations to be included in FMS form 196, Judgment Fund Award Data Sheet based on the terms of the award or settlement agreement. In all cases the Center's Office of Chief Counsel must be involved in processing payments from the Judgment Fund.

Chapter 20

SEVERANCE PAY

20-1. Introduction

This chapter explains severance pay and discusses the following topics:

- Employee eligibility
- Actions covered
- Reasonable offers
- Computing severance pay
- Creditable service
- Pay rate to use
- The severance pay fund
- Life time limits on receipt of severance pay
- Suspension and termination, and
- Records

20-2. Authority

- a. Law authorizing severance pay: 5 USC 5595
- b. OPM regulations concerning severance pay: 5 CFR 550.701 to 713

20-3. Employee Eligibility

To be eligible for severance pay, an employee must be serving under an appointment without time limitation on a full or part-time tour of duty. Employees serving on a time limited appointment which follows an appointment without time limitation with a break in service of 3 calendar days or less are also eligible for severance pay, provided that they are still on a full or part-time tour of duty. Intermittent employees are not eligible for severance pay.

Example 20a:

Gwen is a full-time permanent employee, and on December 31, she leaves her position to accept a full-time temporary appointment on January 1. Potentially, she still is eligible for severance pay. (Section 20-4 explains the conditions under which a separation following a move from a permanent to a temporary appointment is an action that would entitle her to severance pay.)

Example 20b:

John is a full-time permanent employee, and on December 31, he leaves his position to accept a permanent intermittent appointment on January 1. John no longer would be eligible for severance pay because he is not on a regularly scheduled tour of duty. The fact that there was no break in service is irrelevant.

Employees who meet the eligibility requirements described above can be in the competitive service, the excepted service, or the SES. Other qualifying appointments include status quo appointments, overseas limited appointments without time limitation, and time limited appointments in the Foreign Service when the employee was assigned under an authority that included a reemployment right in the same agency but the right has expired.

NOTE: There are some appointments that are not time limited but are not qualifying for severance pay. These include Presidential appointments, non-career SES appointments, Schedule C appointments, and appointments at all levels of the Executive Schedule.

If an employee were appointed to an agency that is scheduled for termination within 1 year of the date of the appointment, the employee would not be eligible for severance pay. However, if by the date of separation, the agency has been extended beyond 1 year from the date of the employee's appointment, the employee would be eligible for severance pay. Also, if the appointment was made with a break in service of 3 calendar days or less following an appointment that did qualify the employee for severance pay, the employee would be eligible for severance pay.

To be eligible for severance pay, an employee must have at least 12 months of continuous service immediately prior to separation. Continuous service means service in civilian positions with no breaks in service of more than 3 calendar days. Time limited appointments that preceded the permanent appointment from which the employee is being separated are counted toward the 12-month requirement. If the employee had any breaks in service during which severance pay was received, those periods are credited. Periods of time during which the employee received continuation of pay or workers compensation also are credited.

Example 20c:

On June 1, 1999, Sharon receives a temporary appointment that is converted to a permanent appointment on January 1, 2000. On February 1, she is injured on the job. After receiving 45 days of continuation of pay, she is out of work receiving workers compensation until October 1, 2000, when she returns to work. On December 1, 2000, she is separated by reduction in force. She meets the 12- month requirement because her temporary service beginning on June 1, 1999, can be credited, and all the time while she was receiving continuation of pay and workers compensation also is credited.

An employee who is receiving injury compensation is not eligible for severance pay unless the compensation was being received concurrently with pay or is the result of another individual's death.

Employees who are receiving or are eligible for an immediate annuity from the military at the time of separation are not eligible for severance pay. An immediate annuity is one that begins within 1 month of separation.

Employees who are receiving or are eligible for an immediate Federal civilian annuity at the time of separation are not eligible for severance pay. An immediate annuity is one that begins within 1 month of separation. It includes optional retirement, voluntary early retirement, and discontinued service retirement.

FERS employees may elect to defer an annuity under the provision known as the minimum retirement age (MRA) plus 10. Employees who have at least 10 years of service and are at least 55 are eligible for an annuity. (Note: Beginning in 2003, the minimum age will go up 2 months each year until it reaches 57.) Because the annuity is significantly reduced for every year the employee is under age 62, many employees elect to defer this annuity. However, because the employee is eligible for it, deferral does not change the fact that the employee is not eligible for severance pay.

The FERS MRA plus 10 is contrasted to the traditional deferred annuity. The deferred annuity is the one which employees with at least 5 years of service become eligible for when they turn 62. This annuity does not disqualify an employee from receiving severance pay even if they are receiving severance pay when the annuity begins.

Example 20d:

Florence will turn 62 on October 1, 2000. She has 18 years of service and is separated by RIF on July 1, 2000. She is entitled to 52 weeks of severance pay. On October 1, 2000, she will begin receiving her deferred annuity and will continue receiving severance pay until July 1, 2001. If she had been under FERS, she would not have been eligible for severance pay because she would have qualified for the MRA plus 10 annuity. If she had been separated on September 15, for example, she would not have been eligible for severance pay even under CSRS because her annuity would have begun within less than a month from the date of her separation.

If following separation, an employee who is otherwise not eligible for an annuity applies for and is granted disability retirement, the employee would forfeit entitlement to severance pay. This is because disability annuities are retroactive to the date of separation. The employee would be required to repay any severance pay already received.

20-4. Actions Covered

To be eligible for severance pay, an employee must be involuntarily separated other than for misconduct or inefficiency. Inefficiency would include a separation for poor performance under parts 432 or 752 of the regulations. However, if a separation is caused by an employee's inability to perform because of a medical condition beyond his/her control and the employee is not eligible for disability retirement, he/she would be eligible for severance pay. Separation by RIF and separation for refusing to accept a reassignment or transfer of function to another commuting area are involuntary separations and entitle eligible employees to severance pay.

If an employee signed a mobility agreement upon entrance into the current position or the position description contained a mobility requirement at the time the employee entered into the position, the employee would not be eligible for severance pay based on declining a reassignment to another commuting area. On the other hand, if the mobility condition were imposed after the employee was in the position, the employee would be entitled to severance pay. If after the mobility condition was imposed, the employee accepts a move to another commuting area, the employee is not eligible for severance pay for failing to accept a subsequent move.

Example 20e:

Grant is an investigator in Washington, DC. Following his entrance into the position, he was required to sign a mobility agreement. Six months later, he is given a directed reassignment to KSC. If he were to decline that reassignment, he would be entitled to severance pay. However, if he accepts the reassignment to KSC and a year later, he is given another reassignment to JSC, he would not be eligible for severance pay if he declines the reassignment to JSC.

If a reassignment would not require an employee to relocate, the employee would not be eligible for severance pay even if the positions were in different commuting areas.

Example 20f:

Gloria lives in Baltimore Maryland, but she works in Washington, DC. Her agency directs her reassignment to a position in Baltimore. Even though Washington, DC and Baltimore are considered separate commuting areas, she would not be eligible for severance pay if she declines the reassignment. This is because the reassignment would not cause her to have to move. On the other hand, if she lived in Washington, DC, she would be entitled to severance pay because a reassignment from Washington, DC to Baltimore can be assumed to necessitate her relocation.

Generally resignations are considered to be voluntary actions and not actions entitling an employee to severance pay. However, if an employee resigns after receiving a RIF separation notice or a RIF demotion notice that is not a reasonable offer (see section 20-5), the employee would be entitled to severance pay. The RIF demotion notice must make it clear that the employee will be separated if the lower graded position is not accepted. If the RIF separation notice is canceled before the effective date of the resignation or the RIF demotion notice is modified to give the employee a reasonable offer, the employee would no longer be entitled to severance pay. This must be explained to the employee, and the employee must be given an opportunity to withdraw the resignation.

If employees receive a general notice clearly stating that all positions in a competitive area will be abolished or transferred to another commuting area, they could resign and would be entitled to severance pay if otherwise eligible.

If an employee receives a directed reassignment to another commuting area and resigns, the employee if otherwise eligible would be entitled to severance pay if the reassignment notice contains an effective date for the reassignment and makes it clear that the Agency intends to separate the employee for failure to accept the reassignment. This can be somewhat tricky because the separation would have to be effected under adverse action procedures. If the reassignment notice states, "If you do not accept this reassignment, action will be initiated to separate you under part 752 of the regulations", this should be sufficient to grant severance pay if the employee resigns and clearly indicates that the resignation is based on the decision not to accept the reassignment.

See 20-9 for a discussion of time-limited appointments.

20-5. Affect of Reasonable Offers on Entitlement to Severance Pay

If an employee declines a reasonable offer, the employee loses eligibility for severance pay. A reasonable offer must be:

- a. In writing
- b. In the employee's agency or one to which the employee's function is transferred
- c. In the commuting area unless the employee is under a mobility agreement
- d. To a position for which the employee meets established qualification requirements
- e. To a position with the same tenure and work schedule as the employee's current position, and
- f. Not lower than two grades below the employee's current position without regard to retained grade

If the Agency has waived qualifications to make the offer, the employee is considered to meet qualifications, and the offer is reasonable.

In some situations, a permanent employee's RIF rights are satisfied by the offer of a time-limited position. In such a case, the employee retains the permanent status while in the time-limited position, and the RIF rights are applied again when the appointment expires. Nevertheless, the offer is not to a position of the same tenure, and it is not a reasonable offer for purposes of denying severance pay.

Retained grade has no effect when determining whether an offer is two grades lower than the employee's grade.

Example 20g:

Chad is in a grade 13 position on a retained grade of 15. He is offered a grade 12 position. Even though this position is 3 grades below his retained grade, it is only 1 grade below his actual grade. Therefore, it is a reasonable offer.

The fact that an employee will receive retained grade has no effect on determining whether an offer is reasonable.

Example 20h:

Gladys is a GS-12 employee being offered a grade 9 position with a retained grade of GS-12. Because the offered position is 3 grades below her current position, it is not a reasonable offer.

When comparing offers between pay systems, the Agency must use representative rates.

Example 20i:

Mickey is a GS-7 employee. He is offered a wage grade position. The rate for the second step of the wage grade is \$11.40 per hour. The second step is the representative rate for wage grade positions. \$11.40 times 2087 equals \$23,792. The representative rate for GS-5, which is two grades below GS-7, is \$23,506. The representative rate is the 4th step on the basic General Schedule or applicable special rate scale including locality pay or special rate supplement. Since the offered position has a higher representative rate than GS-5, the offer is reasonable.

20-6. Computing Severance Pay

The computation of severance pay is based on creditable service and an age adjustment factor.

For each year of service up to 10, an employee is paid one week of severance pay, and for every year after that, the employee receives 2 weeks. For each 3 months beyond a whole year, the employee receives

1/4 of a week in the first 10 years and 1/2 of a week beyond 10 years. For every 3 months that the employee is over 40 years old, the number of weeks is increased by 2.5%.

Determinations concerning the amount of service and the employee's age are made as of the separation date.

Example 20j:

Ellen will have 20 years and 5 months of service on the effective date of her separation. She will be 42 years and 7 months old. The number of weeks of severance pay will be calculated as follows:

- a. 1 week for each of the first 10 years of service: 10 weeks
- b. 2 weeks for each of the next 10 years: 20 weeks
- c. 1/4 times 2 weeks for the 3 months beyond 20 years (nothing for the extra 2 months): .5 weeks
- d. The sum of a through c is 30.5 weeks.
- e. Because she is 2 years and 7 months beyond 40, she gets an age adjustment of 25% (10% for each of the full years; 2.5% for each of the three months over 40, and nothing for the extra month).
- f. $25\% \text{ of } 30.5 = 7.625$
- g. The number of weeks of severance pay which she will receive is $7.625 + 30.5 = 38.125$

20-7. Creditable Service

Civilian service is creditable for severance pay. In addition, service with the Postal Service and Postal Rate Commission is creditable. Military service occurring before civilian service is not creditable. Military service that interrupts civilian service is creditable if the employee returns to civilian service through an exercise of a restoration right.

Nonappropriated fund service performed for the Defense Department or the Coast Guard is creditable for employees who move to the civil service of the Defense Department or the Coast Guard respectively without a break of more than 3 calendar days, but it is not creditable for employees in NASA.

20-8. Pay Rate to Use

An employee's severance pay is based on the pay rate received at the time of separation. This includes locality pay, special rate supplement stand by pay, and availability pay. It also includes night shift differential pay for wage system employees but not for GS employees. It does not include other additional pay such as administratively uncontrollable

overtime and retention allowances. If an employee is in a non-pay status, the severance pay is based on the rate of pay that the employee normally would receive. If the employee is on a part-time tour, the rate of pay is the pay that the employee actually is receiving.

Example 20k:

Garry is entitled to 30 weeks of severance pay. The weekly rate for his grade and step is \$600, but because he has a part-time schedule of 20 hours per week, he will receive 30 weeks of severance pay at \$300 per week. This is true even if he had been a full-time employee and only recently changed to part time. Conversely, if he had been working part-time and changed to full-time, he would receive the 30 weeks of severance pay at a rate of \$600 per week. Contrast this situation to the situation explained below where an employee is on a mixed tour of duty with a specified number of full and part-time weeks.

20-9. Time-limited Appointments

If a permanent employee accepts a *temporary appointment without a break in service* of more than 3 calendar days, the employee generally will be entitled to severance pay when the temporary appointment expires, provided he/she is otherwise eligible to receive severance pay. This is true even if the employee voluntarily accepts the temporary appointment, and is not restricted to cases involving a RIF action. This seems to go against common sense because an employee is permitted to voluntarily leave a permanent job, accept a temporary position, and then get the severance pay when the temporary appointment expires as intended. However, the courts and GAO have mandated this result (see Musser, B-213346, March 1986) and it is now reflected in OPM's regulations. The agency currently employing the employee is responsible for payment of severance pay upon separation from the time-limited appointment, even though the entitlement may have originated in another agency.

On the other hand, a permanent employee who accepts a temporary appointment without a break in service of more than 3 calendar days and *resigns* prior to the expiration of the temporary appointment forfeits the entitlement to severance pay. Centers should ask employees in these situations to sign a statement indicating that he/she understands the resignation is voluntary and that it results in the forfeiture of severance pay.

Any severance pay entitlement that an employee may have based on an involuntary separation from a permanent appointment is immediately terminated (not suspended) when the employee receives a qualifying

temporary appointment. (See 5 CFR 550.711.) Severance pay for an employee in a qualifying temporary appointment is triggered by the involuntary separation from that appointment (including expiration of the appointment as provided in the definition of "involuntary separation" in 5 CFR 550.703) and is computed using the rate of basic pay at the time of separation from that temporary job. (See 5 CFR 550.709(b).) Thus, the agency employing the individual in a time-limited job is liable for any severance payments.

In contrast, if a temporary appointment is not qualifying for severance pay because the employee is hired 4 or more days after involuntary separation from a qualifying permanent appointment, the severance pay liability rests with the agency in which the employee had a permanent appointment. Severance payments by that agency are merely suspended during the temporary appointment.

If an employee moves from a permanent appointment to a time-limited appointment without a break of more than 3 days, the employee's severance pay will be based on the rate earned under the time limited appointment and is recalculated to include service under the temporary appointment. Note: This is a change from the way it was at one time. At one time the regulations provided that the rate would be based on what the employee earned under the permanent appointment. There are many old CG decisions that state this. Because the regulation has been changed, those decisions should not be followed.

A mixed tour is a situation where an employee works a specified number of pay periods on a full-time schedule and the other pay periods on a part-time schedule. In such a case, the Agency must review the employee's work history for the past 26 biweekly pay periods and compute an average to determine the rate to be used for severance pay.

Example 20I:

Dawn is on a mixed tour. She works 26 weeks on a full-time schedule and 26 weeks on a part-time schedule of 20 hours per week. The weekly rate for her grade and step is \$500. She is entitled to 40 weeks of severance pay. To compute the rate, multiply 26 weeks times 1 to represent the full-time weeks plus 26 times .5 to represent the part-time weeks, for a result of 39. Divide 39 by 52 weeks (.75). In other words, on the average she has a tour of duty equal to .75 of a full-time tour. Her severance pay weekly rate will be .75 times 500 equals \$375. She will receive 40 weeks of severance pay at the rate of \$375 per week.

Sometimes an employee is in a position in which the standby duty varies. The Agency again must compute the average for the previous 26 biweekly pay periods. If prior to separation, the employee is moved to a position that has no standby duty, the standby duty is not included in the calculation of the pay rate.

Example 20m:

Don's standby premium pay regularly varies. His basic rate of pay is \$1,000 per week. For the 26 pay periods preceding his RIF separation, he works the following: 13 weeks with 25% standby pay, 13 weeks with 10% standby pay, and 26 weeks with no standby pay. He is entitled to 20 weeks of severance pay.

To compute his rate, multiply $(\$1,250 \times 13) + (\$1,100 \times 13) + (\$1,000 \times 26)$. Divide the result by 52 (\$1,087.50). Therefore, he will receive 20 weeks of severance pay at \$1,087.50 per week. \$1,250 is derived from his rate of \$1,000 plus the 25% standby pay, and the \$1,100 is derived from \$1,000 plus his 10% standby pay.

If prior to separation, he were reassigned to a position that had no standby duty and had a pay rate of \$1,000 per week, his severance pay would be paid at the rate of \$1,000 per week.

Often wage system employees are required to rotate between the night and day shifts. When this is the case, compute the average rate.

Example 20n:

Sonya works 26 weeks on the night shift and 26 weeks on the day shift. Her basic rate is \$10.00 per hour, and her night shift rate is \$11.00 per hour. These equal weekly rates of \$400 and \$440 respectively. Since she works half the year at each rate, her rate will be \$420 per week. If she is entitled to 15 weeks of severance pay, she will receive 15 weeks at the rate of \$420 per week.

The computations described above should be used only when there are regular variations. By contrast, if an employee who has been working on the day shift is moved to the night shift a few weeks before a RIF, and it was the Agency's intention that this move was to be permanent, the full night shift rate should be used as the employee's rate, not the average. It would be irrelevant that the employee worked much of the previous year on the day shift.

If an employee is on a time-limited promotion at the time of separation, the employee will be paid severance pay at the rate earned on the promotion. On the other hand, if the Agency terminates the promotion prior to the effective date of the separation, the employee will be paid severance pay at the lower rate of the permanent position.

It is up to Centers how to handle this issue. Centers should establish a uniform policy for a particular RIF. It may be desirable not to terminate time-limited promotions as a way of providing the maximum assistance to employees. On the other hand, if the Center is having budget problems, it may need the money that the termination of time-limited promotions would save.

20-10. Severance Pay Fund and Lifetime Limits

The severance pay fund is the total that the employee is entitled to based on any one action. It may not exceed 52 weeks.

There is also a life time limit of 52 weeks for each employee. Thus if an employee earned 20 weeks of severance pay at an earlier time, the employee now can earn only 32 weeks regardless of what the calculation otherwise would yield. The employee's severance pay is calculated in the usual way, and then the number of weeks previously earned is subtracted.

Example 20o:

After Andy had 6 years of service, he was separated by RIF and was paid 6 weeks of severance pay.

He has returned to the Federal government and has worked an additional 10 years, for a total of 16 years of service. Unfortunately he must be separated again. He is under 40. His basic severance pay calculation results in 22 weeks: 10 weeks for the first 10 years of service and 12 weeks for the next 6 years. However, because he already was paid 6 weeks of severance pay at an earlier time, he can be paid only 16 weeks of severance pay (22 minus 6).

He again returns to work for the Federal government. He works 8 more years but is separated by RIF again. By this time he is 49 years old. He would be entitled to 1 week of severance pay for each of the first 10 years of service, and 2 weeks for each of the next 14 years for a total of 38 weeks. Because he is 49 years old, he has an age adjustment factor of 90%. 90% of 38 equals 4.2, so the total is 72.2. However, the maximum severance pay is 52 weeks. Since he already has been paid 22 weeks of severance pay, he would be entitled to only 30 weeks (52 minus 22).

If he were reemployed, he could not receive any more severance pay because he has received 52 weeks in his life.

20-11. Payment of Severance pay

Severance pay is paid at the same intervals which the employee received salary. Taxes, Medicare, and FICA are deducted. FICA is deducted only for those employees for whom it was being deducted when they were employed, so it would not be deducted for employees who were under the Civil Service Retirement System (except for offset employees).

The last payment may be a partial payment if, for example, the employee was entitled to 50.5 weeks of severance pay.

20-12. Suspension and Termination of Severance Pay upon Reemployment

Severance pay terminates when an employee returns to the Federal government (including the Postal Service) under a qualifying appointment, which generally would be a permanent appointment with a full or part-time tour of duty. It does not matter whether the appointment is equivalent to what the employee previously occupied or whether it's at a lower grade. Severance pay is not reinstated if the employee leaves the position. If the

separation from the new position creates a new entitlement to severance pay, it is calculated based on the factors in effect at that time with the subtraction for previously paid severance pay as explained above.

If an employee who is being paid severance pay accepts a time-limited appointment with a break of more than 3 calendar days, severance pay is suspended and resumed at the same rate when the time-limited appointment is terminated. If there was a relatively short period between the separation and the time-limited appointment, so that no payments had been made, they are not made until after the time-limited appointment is over.

Centers need to be careful about offering a temporary appointment to a separated employee with a break in service of 3 days or less because a new severance pay entitlement may result from the termination of the temporary appointment. OPM has ruled that the Center would be responsible for the full amount of severance pay even if the original separation were at another Agency. This is unfortunate and may result in fewer placement offers.

Example 20p:

Art is separated by RIF from HUD on October 31. He is entitled to 40 weeks of severance pay. On November 1, NASA Headquarters gives him a temporary appointment. When that appointment expires, there would be a new entitlement to severance pay. NASA Headquarters would have to compute his severance pay upon separation from the temporary appointment and would be responsible for all of it. If NASA waited until November 5 to effect Art's temporary appointment, the severance pay that HUD is required to pay would be suspended because there would be a break of more than 3 days. When Art's temporary appointment was completed, HUD would resume paying the severance pay. One problem for Art would be that because there was a break of more than 3 days, benefits such as health insurance would not continue.

If an individual dies while receiving severance pay, severance pay continues being paid to the survivors. However, if the individual dies prior to separation, there is no severance pay. This is true even if a separation notice had been issued, and it is because the entitlement to severance pay is based on the separation.

20-13. Improper Uses of Severance Pay

Centers need to be careful that severance pay is not misused. There have been cases where agencies and employees have developed sweetheart

deals. For example, an agency abolished an employee's position and with the agreement of the employee did not review the employee's RIF rights. Rather, the Agency simply issued a notice separating the employee by RIF. It was later found that the employee would have been entitled to a reasonable offer. The employee was required to return the severance pay, and disciplinary actions were taken against the personnel officials who took the action. Remember, unlike discontinued service retirement, mere abolishment of a position does not establish an entitlement to severance pay.

20-14. Relation of Severance Pay to Buyouts

To date, buyout authorities at NASA have been either \$25,000 or an amount equal to an employee's severance pay entitlement, whichever is less. The calculation of the severance pay is done regardless of whether the employee is actually eligible for severance pay or whether the employee previously had received severance pay.

An employee cannot receive both a buyout and severance pay. An employee must voluntarily retire or resign to receive a buyout, and such a voluntary action would not entitle an employee to severance pay.

20-15. Records

For each fiscal year, Centers must keep records of the number of employees who receive severance pay and the total amount of severance pay paid. Also, when work is contracted out, Centers must keep track of the number of employees who go to work for the contractors within 90 days. This is actually a remnant from previous regulations. At one time, employees who went to work for contractors within 90 days were not eligible for severance pay, but that restriction was eliminated. However, OPM still requires agencies to keep this information.

CHAPTER 21

REDESIGNATION BONUS

21-1. Introduction

This chapter describes the use of redesignation bonuses.

Redesignation bonuses were one of the flexibilities added by the NASA Flexibility Act of 2004 . It is unique to NASA and is not used by other Federal agencies. It permits NASA to pay bonuses to employees of another Federal agency in the Executive, Legislative, or Judicial Branch of the Federal government who is appointed to a NASA position in the same geographic area when it is determined that in the absence of the bonus, difficulty would be encountered in filling the position.

As we have explained in previous chapters and reiterate below, that due to some of the restrictions on the use of incentives under the NASA Flexibility Act it is sometimes more beneficial to offer incentives under the Federal rules. This, however, is not the case with the redesignation bonus. It can only be authorized under the NASA Flexibility Act and, therefore, the rules pertaining to their use must be met.

As explained in Chapter 2, 13, and 14 the rules governing bonuses paid under the NASA Flexibility Act have some unique requirements and must be considered when authorizing a bonus. These include:

- Not more than 25% of the total dollar amount of bonuses paid in a fiscal year may be paid to employees in supervisory or managerial positions;
- The enhanced bonus amounts (e.g., those greater than 25% of rate of basic pay) may only be authorized to meet a critical need of the Agency as defined by NASA's Workforce Plan;
- The bonus is calculated as a percentage of the rate of basic pay (i.e., the General Schedule) unless it addresses a critical need as specified in the Workforce Plan then it is calculated from the applicable locality or special rate table; and
- NASA must report annually to Congress on its use of bonuses.

There is no risk of violating the above restrictions if the bonus is authorized for a non-supervisory/non-managerial position. The risk develops when it and other incentives under the NASA Flexibility Act are authorized for supervisory/managerial positions. Centers must control

the use of these incentives in the aggregate (i.e., the roll-up of all recruitment, redesignation, relocation and retention incentives during the fiscal year) so that the total of all combined do not violate the 75-25 employee-supervisor split on total dollars authorized under the Act.

NASA is required to report annually to Congress on its compliance with 75 – 25 split on payment of bonuses under the NASA Flexibility Act. Failure to adhere to this requirement prior to authorizing an incentive puts the Agency at risk of violating the statute.

21-2. GENERAL REQUIREMENTS

1. All bonuses are to be used only in situations where the position would be likely, in the absence of a bonus, to be difficult to fill.
2. Bonuses are appropriate when an individual selected for a difficult to fill position indicates an unwillingness to accept because of insufficient compensation. Before offering a bonus, other incentives and alternatives should be considered, either in lieu of or in conjunction with bonuses. Other possible incentives and alternatives include superior qualifications appointments and qualifications pay, as applicable.
3. All bonuses are to be offered in accordance with merit principles, and shall be in amounts, and under terms, commensurate with the needs of the Agency.
4. Approvals must be based on written documentation that addresses the requisite criteria. The documentation also must identify whether the position addresses a critical need as identified in NASA's Workforce Plan.
5. Payment of a bonus under these provisions is contingent upon the employee signing a service agreement.

21-3. DETERMINING BASIC ELIGIBILITY

1. Any case in which the Agency is considering paying a bonus under these provisions must be evaluated using the basic eligibility criteria outlined below in the matrix and the explanatory paragraphs. If the situation does not meet the minimum requirements as identified below, no bonus payment may be made.

BASIC ELIGIBILITY CRITERIA

Criteria	Definition	Elements
Degree of Difficulty in Recruitment	Extent to which quality candidates possessing the required skills and experience are available in the labor force.	(a) Recent recruitment efforts for comparable positions in the same geographic area demonstrate that it is difficult to find well-qualified candidates.
		(b) Positions requiring the skills are often vacant, and fill times are prolonged.
		(c) Positions requiring the skills typically have a high turnover rate.
		(d) Labor market trends demonstrate that the Agency is likely to experience difficulty in finding well-qualified candidates now and/or in the future.
		(e) Candidates offered positions requiring these skills frequently decline the job offer.
		(f) Position is in a new or emerging technical area where the organization has a demand for the skills, but little recruitment history.

2. Evaluating “Degree of Difficulty in Hiring”: To meet the minimum requirements for bonus eligibility under this section, the position normally must meet any two of elements (a) through (e) OR element (f).

3. If the position does not meet at least two of the elements, identified above, but presents issues of equivalent difficulty in the recruitment process, they may be used in lieu of elements (a) through (e) in justifying payment of a bonus.

4. Each case file must include documentation explaining and supporting the basis of payment eligibility. Where a position is described as having a prolonged fill time or a high turnover rate, the justification must include information supporting that determination in the context of the specific type of work involved.

21-4. DETERMINING THE BONUS LEVEL

1. Whenever there has been a positive determination of bonus eligibility, a further determination must be made as to the appropriate bonus level.

2. Bonus Maximums

a. Individuals in positions requiring competencies identified in the NASA Workforce Plan as meeting a *critical need* are eligible for a bonus up to a maximum of 50% of the annual rate of basic pay (including comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.) at the beginning of the service period multiplied by the service period. The service period shall, for this purpose, be identified in years and fractions of years. (Note: Total bonus payment may not exceed 100% of the annual rate of basic pay as of the beginning of the service period. Therefore, any individual receiving the maximum amount of the bonus will incur a service period of two years.)

b. Individuals in positions *not* requiring competencies defined as critical needs are eligible for a bonus up to a maximum of 25% of the employee's annual rate of basic pay (excluding comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.) as of the beginning of the service period.

3. General Principles:

a. There is no entitlement, either implied or explicit, for an employee to receive the maximum bonus allowable under the law.

b. Even where the evaluation of the criteria may support payment of a high bonus, the organization will pay a smaller bonus if such an amount is sufficient to secure a candidate's acceptance.

4. Bonus Level Assessment: The following matrix is to be used in determining the appropriate maximum level of bonus payment.

BONUS LEVEL EVALUATION CRITERIA

Recruitment, Relocation, and Resignation Bonuses

Criteria	Definition	Elements
1. Impact of Market Forces	Extent to which a specific candidate is likely to accept a job offer.	(a) Applicant provides evidence of a higher competing offer of employment. (Note: Offer may be from a Federal OR non-Federal employer.)
		(b) Candidate's current salary is higher than the salary of the position being offered. (Note: Position being offered may be Federal or non-Federal.)
		(c) Salaries in the candidate's field are higher than for those of comparable positions at this location, as demonstrated by salary surveys or other objective evidence.
2. Individual Attributes	Extent to which the individual possesses competencies that will enhance that Agency's ability to accomplish its mission.	(a) Individual's work experience and/or academic preparation have an unusually close and direct relevance to the position being filled.
		(b) Individual has contributed to the expansion of the body of knowledge in the professional field as evidenced by research publications and/or leadership on professional panels, committees, and/or professional and honorary societies.
		(c) Individual's professional contributions have been formally recognized in the form of awards, citations, and/or commendations.
		(d) Individual brings new skills or perspectives not previously available, as demonstrated by unique or unconventional professional achievements.

		<p>(e) FRESH-OUTS ONLY: Candidate possesses a high level and quality of educational attainment compared to the minimum educational requirements of the position. “High level and quality” is defined as an individual who has at least a 3.5 GPA in the academic discipline related to the position being filled.</p>
--	--	--

a. Using the Matrix: Criteria in the matrix provide key representative examples of elements that may be used to establish the level of the bonus payment. They are not, however, all-inclusive. Other issues of commensurate significance may be used, when documented, to establish the level of the bonus.

b. Candidates Meeting Only Basic Eligibility: In some cases, candidates may meet basic bonus eligibility, but do not meet any of the criteria in the matrix above, or other comparable elements. Such individuals will be paid bonuses that do not exceed one-third of the maximum percentage allowable under the law. That is, bonuses paid to candidates for critical need positions will not exceed

approximately 17% (out of a maximum 50%) of basic salary; bonuses paid to candidates for positions not meeting a critical need will not exceed approximately 8% (out of a maximum 25%) of basic salary.

c. Criterion 1, Impact of Market Forces: Candidates who meet one or more of these or comparable elements may be offered a bonus sufficiently high enough to be competitive with the individual's other employment alternative(s), and to create an incentive to accept the NASA position.

d. Criterion 2, Individual Attributes

i. Candidates who meet Criterion 1, and who also possess skills and knowledge with the potential to substantially enhance NASA's capabilities and reputation by meeting one or more of the elements under Criterion 2 or equivalent elements, may be paid a bonus up to the maximum amount allowable.

ii. Candidates who do not meet Criterion 1, but who demonstrate a high level of professional achievement, comparable to the elements outlined under Criterion 2 of the matrix, may be awarded bonuses higher than the minimum one-third of the maximum under paragraph 4b of this section. The documentation must demonstrate a level of accomplishment sufficient to justify the percentage being offered.

5. All bonus level determinations beyond the minimum must be supported by documentation of the circumstances warranting the higher-level payment.

21-5. PAYMENTS

1. Bonuses paid under these provisions are not to be considered part of an employee's rate of basic pay for any purpose.

2. Bonuses paid under these provisions are subject to the aggregate compensation limitation established in 5 U.S.C. 5307 and regulated in 5 CFR part 530, subpart B. They constitute "other similar payments" under paragraph (14) of the definition of "aggregate compensation" in 5 CFR 530.202.

3. The final decision on the payment method rests with management, although employee preferences should be given strong consideration to the extent practicable.

4. Bonuses may be paid as an initial lump-sum payment, in equal installments at the end of specified periods throughout the service period (e.g., biweekly, monthly, quarterly, etc.), in variable payments at the end of specified periods, as a final lump sum payment, or in a combination of payment methods.

21-6. SERVICE AGREEMENTS

1. Approving officials will assure that the service agreement provides for the maximum return on the Agency investment appropriate in the specific circumstances.

2. Service agreements will be for a period of not less than 6 months and not more than 4 years. The service period must begin on the first day of a pay period and end on the last day of a pay period.

3. Before paying a bonus, the agency must require the employee to sign a written service agreement to complete a specified period of employment. The service agreement must include:

a. The required period of service, which will be expressed in years and/or whole months, with partial months being rounded to the nearest month.

b. The method of payment, including the payment schedule.

c. The amount of the bonus and the basis for calculation.

d. Conditions under which the agreement may be terminated before the expiration of the service period and the effect of such early termination.

e. Conditions under which the employee would be required to repay a bonus, and how a repayment will be computed.

4. In addition to the service requirement in paragraph outlined above, the service agreement may specify other terms and conditions of employment applicable to the employee. For example, the service agreement may specify the employee's work schedule, type of position, and performance level. In addition, the service agreement may address the extent to which periods of time on a detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

21-7. BONUS REPAYMENT

1. Employees who fail to complete the established period of service normally will be required to repay bonus monies under the conditions specified in the service agreement. Employees may also be required to repay a bonus if they violate any other condition specified in the service agreement that would trigger termination of the agreement.

2. Employees who fail to complete the period of employment established under a service agreement shall be required to repay the bonus on a pro rata basis, as identified in 5 CFR 575.107. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement.

3. Consistent with the criteria in 5 CFR Part 575, no employee will be required to repay a bonus if he or she is involuntarily separated, as that term is defined in 5 CFR 575.103. No employee receiving a relocation bonus will be required to repay that bonus if the Agency determines that it is necessary to relocate the employee outside of the commuting area.

4. Re-payment may be waived only when a determination is made that recovery would be against equity and good conscience or against the public interest.

Appendix I

LIST OF ACRONYMS

AD	Administratively Determined
CFR	Code of Federal Regulations
CG	Comptroller General
FEPCA	Federal Employees Pay Comparability Act
FWS	Federal Wage System
GAO	Government Accountability Office
GS	General Schedule
HPR	Highest Previous Rate
LEO	Law Enforcement Officer
MPR	Maximum Payable Rate
MSPB	Merit Systems Protection Board
NEX	NASA Excepted
NPD	NASA Policy Directive
NPG	NASA Procedures and Guidelines
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PCA	Physicians' Comparability Allowance
PMRS	Performance Management and Recognition System
QSI	Quality Step Increase
RIF	Reduction in Force
RUS	Rest of United States
SES	Senior Executive Service
SL	Senior Level
ST	Senior Scientific and Professional
USC	United States Code
WG	Wage Grade
WIG	Within-Grade Increase
WL	Wage Leader
WS	Wage Supervisor