This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Personnel Management shall issue guidance on implementing this memorandum, and is also hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 5333. Minimum rate for new appointments

New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 467; Pub. L. 90–83, § 1(19), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, § 2(a)(26)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101–509, title V, § 529 [title I, § 106, title II, § 211(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1449, 1461.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1131.	Oct. 28, 1949, ch. 782, § 801, 63 Stat. 969. Aug. 14, 1964, Pub. L. 88–426, § 103(a), 78 Stat. 401.
(b)	5 U.S.C. 1133.	Oct. 28, 1949, ch. 782, § 803, 63 Stat. 970. Sept. 1, 1954, ch. 1208, § 104, 68 Stat. 1106. Oct. 11, 1962, Pub. L. 87–793, § 604(c), 76 Stat. 848.

In subsection (b), the word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5333(a)	5 App.: 1131.	July 18, 1966, Pub. L. 89–504, § 103, 80 Stat. 289.

AMENDMENTS

1990—Pub. L. 101–509 struck out ''; higher rates for supervisors of prevailing rate employees'' after ''appointments'' in section catchline, struck out ''(a)'' before ''New appointments shall'', struck out ''in GS–11 or above'' after ''individual to a position'', and struck out subsec. (b) which read as follows: ''Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations.''

1979—Pub. L. 96–54 substituted ''prevailing rate'' for ''wage-board'' in section catchline.

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 5334. Rate on change of position or type of appointment; regulations

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

(1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;

(2) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter applies to another such position;

(3) he is demoted to a position in a lower grade;

(4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch;

(5) his type of appointment is changed;

(6) his employment status is otherwise changed; or

(7) his position is changed from one grade to another grade.

For the purpose of this subsection, an individual employed by the Appalachian Regional Commission under section 14306(a)(2) of title 40, who was a Federal employee immediately prior to such employment by a commission and within 6 months after separation from such employment is employed in a position to which this subchapter applies, shall be treated as if transferred from a position in the executive branch to which this subchapter does not apply.

(b) An employee who is promoted or transferred to a position in a higher grade is entitled

to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

(1) the maximum rate of the higher grade; or

(2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

(A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or

(B) his existing rate of basic pay, if that rate is the higher.

If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for the employee's grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

(1) at the minimum rate of the appropriate grade; or

(2) at a step of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

(d) The rate of pay established for a teaching position as defined by section 901 of title 20 held by an individual who becomes subject to subsection (a) of this section is deemed increased by an amount determined under regulations which the Secretary of Defense shall prescribe for the determination of the yearly rate of pay of the position. The amount by which a rate of pay is increased under the regulations may not exceed the amount equal to 20 percent of that rate of pay.

(e) An employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) may, on appointment to a position subject to this subchapter, have the initial rate of basic pay of the employee fixed at—

(1) the lowest rate of the higher grade that exceeds the rate of basic pay of the employee with the county committee by not less than 2 step-increases of the grade from which the employee was promoted, if the Federal Civil Service position under this subchapter is at a higher grade than the last grade the employee had while an employee of the county committee;

(2) the same step of the grade as the employee last held during service with the county committee, if the Federal Civil Service position under this subchapter is at the same grade as the last grade the employee had while an employee of the county committee; or

(3) the lowest step of the Federal grade for which the rate of basic pay is equal to or greater than the highest previous rate of pay of the employee, if the Federal Civil Service position under this subchapter is at a lower grade than the last grade the employee had while an employee of the county committee.

(f)(1) An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) who moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, may have such employee's initial rate of basic pay fixed at the minimum rate of the appropriate grade or at any step of such grade that does not exceed—

(A) if the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c) is equal to a rate of the appropriate grade, such rate of the appropriate grade;

(B) if the employee's highest previous rate of basic pay (as described in subparagraph (A)) is between two rates of the appropriate grade, the higher of those two rates; or

(C) if the employee's highest previous rate of basic pay (as described in subparagraph (A)) exceeds the maximum rate of the appropriate grade, the maximum rate of the appropriate grade.

(2) In the case of a nonappropriated fund employee who is moved involuntarily from such nonappropriated fund instrumentality without a break in service of more than 3 days and without substantial change in duties to a position that is subject to this subchapter, the employee's pay shall be set at a rate (not above the maximum for the grade, except as may be provided for under section 5365) that is not less than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately prior to so moving.

(g) In the case of an employee who—

(1) moves to a new official duty station, and

(2) by virtue of such move, becomes subject to a different pay schedule,

any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, shall be made—

(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and

(B) then, by applying the provisions of this section that would otherwise apply (if any),

treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 468; Pub. L. 90–103, title I, § 105, Oct. 11, 1967, 81 Stat. 257; Pub. L. 90–367, § 1, June 29, 1968, 82 Stat. 277; Pub L. 90–623, § 1(6), (24), Oct. 22, 1968, 82 Stat. 1312, 1314; Pub. L. 95–454, title V, § 503(f), title VIII, § 801(a)(2), (3)(F), (G), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1184, 1221, 1222, 1224; Pub. L. 96–54, § 2(a)(27), Aug. 14, 1979, 93 Stat. 383; Pub. L. 98–615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 99–251, title III, § 306(b), Feb. 27, 1986, 100 Stat. 27; Pub. L. 101–508, title VII, § 7202(d), Nov. 5, 1990, 104 Stat. 1388–335; Pub. L. 103–89, § 3(b)(1)(G), Sept. 30, 1993, 107 Stat. 982; Pub. L. 104–186, title II, § 215(4), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 105–85, div. A, title XI, § 1104(a), Nov. 18, 1997, 111 Stat. 1923; Pub. L. 105–393, title II, § 223, Nov. 13, 1998, 112 Stat. 3626; Pub. L. 107–171, title X, § 10701, May 13, 2002, 116 Stat. 515; Pub. L. 108–178, § 4(a), Dec. 15, 2003, 117 Stat. 2640; Pub. L. 108–411, title III, § 301(a)(3), Oct. 30, 2004, 118 Stat. 2315; Pub. L. 110–181, div. A, title XI, § 1114, Jan. 28, 2008, 122 Stat. 360.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(d)	5 U.S.C. 1132.	Oct. 28, 1949, ch. 782, § 802, 63 Stat. 969. Sept. 1, 1954, ch. 1208, § 112 (as applicable to § 802(b)), 68 Stat. 1108. May 29, 1958, Pub. L. 85–432, § 4(a), (b), 72 Stat. 151. July 31, 1959, Pub. L. 86–122, § 2(a), 73 Stat. 268. Oct. 11, 1962, Pub. L. 87–793, § 604(a), (b), 76 Stat. 847.
(e)	5 U.S.C. 2357.	July 17, 1959, Pub. L. 86–91. § 9, 73 Stat. 216.

In subsection (b), the words ''under any provision of law'' are omitted from the second sentence as unnecessary.

In subsection (e), the words ''as defined by section 901 of title 20'' are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110–181 designated first sentence as par. (1), substituted ''does not exceed—'' for ''does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c).'', added subpars. (A) to (C), and designated second sentence as par. (2).

2004—Subsec. (b). Pub. L. 108–411, § 301(a)(3)(A), inserted concluding provisions.

Subsec. (g). Pub. L. 108–411, § 301(a)(3)(B), added subsec. (g).

2003—Subsec. (a). Pub. L. 108–178 substituted ''section 14306(a)(2) of title 40'' for ''section 106(2) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)''.

2002—Subsec. (e). Pub. L. 107–171 added subsec. (e) and struck out former subsec. (e) which read as follows: ''An employee of a county committee established pursuant to section 590h(b) of title 16 may, upon appointment to a position subject to this subchapter, have his initial rate of basic pay fixed at the minimum rate of the appropriate grade, or at any step of such grade that does not exceed the highest previous rate of basic pay received by him during service with such county committee.''

1998—Subsec. (a). Pub. L. 105–393 substituted ''the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)'' for ''title 40, appendix, or by a regional commission established pursuant to section 3182 of title 42, under section 3186(a)(2) of that title''.

1997—Subsec. (d). Pub. L. 105–85 substituted ''an amount determined under regulations which the Secretary of Defense shall prescribe for the determination of the yearly rate of pay of the position. The amount by which a rate of pay is increased under the regulations may not exceed the amount equal to 20 percent of that rate of pay.'' for ''20 percent to determine the yearly rate of pay of the position.''

1996—Subsec. (c). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

1993—Subsec. (c)(2). Pub. L. 103–89, § 3(b)(1)(G)(i), substituted ''step'' for ''step, or for an employee appointed to a position covered by the performance management and recognition system established under chapter 54 of this title, any dollar amount,''.

Subsecs. (f), (g). Pub. L. 103–89, § 3(b)(1)(G)(ii), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''In the case of an employee covered by the performance management and recognition system established under chapter 54 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent.''

1990—Subsec. (g). Pub. L. 101–508 added subsec. (g).

1986—Subsec. (e). Pub. L. 99–251 substituted ''may, upon appointment to a position'' for ''may upon appointment to a position under the Department of Agriculture,''.

1984—Subsecs. (c)(2), (f). Pub. L. 98–615 substituted ''the performance management and recognition system established under chapter 54'' for ''the merit pay system established under section 5402''.

1979—Subsec. (a). Pub. L. 96–54 substituted ''106(2)'' for ''106(a)'' and ''3186(a)(2)'' for ''3186(2)''.

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 95–454, § 801(a)(3)(F), substituted ''subchapter VI of this chapter'' for ''section 5337 of this title'' wherever appearing.

Subsec. (c). Pub. L. 95–454, § 503(f)(1), in par. (2) inserted reference to an employee appointed to a position covered by the merit pay system established under section 5402 of this title.

Subsecs. (d) to (f). Pub. L. 95–454, § 801(a)(2), (3)(G), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), which related to regulations governing the retention of the rate of basic pay of an employee and his position covered by this subchapter and chapter 51 of this title, was struck out.

Pub. L. 95–454, § 503(f)(2), added a new subsec. (f).

1968—Subsec. (a). Pub. L. 90–623, § 1(6), substituted ''title 40, appendix'' for ''the Appalachian Regional Development Act of 1965'', ''section 3182 of title 42, under section 3186(2) of that title'' for ''section 502 of the Public Works and Economic Development Act of 1965, under section 506(2) of such Act'', and ''6'' for ''six''.

Subsec. (f). Pub. L. 90–623, § 1(24), substituted ''section 590h(b) of title 16'' for ''section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b))''.

Pub. L. 90–367 added subsec. (f).

1967—Subsec. (a). Pub. L. 90–103 provided for treatment as a transfer from a position in the executive branch to which this subchapter does not apply of certain regional commission employees who were Federal employees immediately prior to employment by a commission and were employed within six months after separation from the commission in a position subject to this subchapter.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or

after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–178, § 5, Dec. 15, 2003, 117 Stat. 2642, provided that: ''This Act [see Tables for classification] and amendments and repeals made by this Act are effective August 21, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1104(b) of Pub. L. 105–85 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

''(2) In the case of a person who is employed in a teaching position referred to in section 5334(d) of title 5, United States Code, on the day before the effective date under paragraph (1), the rate of pay of that person determined under that section (as in effect on that day) may not be reduced by reason of the amendment made by subsection (a) for so long as the person continues to serve in that position or another such position without a break in service of more than three days on or after that day.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 205 of Pub. L. 98–615 provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by section 503(f) of Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 801(a)(2), (3)(F), (G) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–623 provided that:

''(a) Sections 1–5 of this Act [amending this section, sections 559, 2108, 3102, 3502, 5314, 5315, 5316, 5352, 5353, 5516, 5521, 5527, 5537, 5546, 5724, 6104, 6305, 6312, 6323, 6324, 8143, 8191, 8331, and 8347 of this title, sections 101, 510 [now 12102], 815, 1124, 3534, 4342, 5149, 6483, 6954, and 9342 of Title 10, Armed Forces, sections 101, 212, 205, 305, 306, 307, 308, 311, 406, 417, 554, 703, 904, 1001, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and sections 2727 and 2994b of Title 42, The Public Health and Welfare, and repealing section 8339 note of this title] restate, without substantive change, the laws replaced by those sections on the effective date of this Act. Laws effective after June 30, 1968, that are inconsistent with this Act [Oct. 22, 1968] supersede it to the extent of the inconsistency.

''(b) References made by other laws, regulations, and orders to the laws restated by this Act are deemed to refer to the corresponding provisions of this Act.

''(c) Actions taken under the laws restated by this Act are deemed to have been taken under the corresponding provisions of this Act.

''(d) Sections 1(2) and 1(14) of this Act [amending sections 2108 and 5724 of this title] are effective as of September 11, 1967, for all purposes.

''(e) Sections 1(13)(B) and 1(17) of this Act [amending sections 5546 and 6323 of this title] are effective as of September 6, 1966, for all purposes.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

(1) each 52 calendar weeks of service in pay rates 1, 2, and 3;

(2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or

(3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an op-