

(e) The unrestricted rates authorized under this subpart shall be shown on the appropriate regular or special schedule or as an amendment to the schedule and shall indicate the wage area (or part thereof) and each occupation or occupational specialization and grade for which the rates are authorized. These rates shall be paid by all agencies having such positions in the wage area (or part thereof) specified.

[57 FR 57876, Dec. 8, 1992]

## PART 534—PAY UNDER OTHER SYSTEMS

### Subpart A [Reserved]

### Subpart B—Student-Employees in Government Hospitals

Sec.

- 534.201 General.
- 534.202 Coverage.
- 534.203 Maximum stipends.
- 534.204 Previous authorizations.

### Subpart C [Reserved]

### Subpart D—Pay and Performance Awards Under the Senior Executive Service

- 534.401 Definitions and setting individual basic pay.
- 534.402 Aggregate compensation.
- 534.403 Performance awards.
- 534.404 Pay computation for members of the Senior Executive Service.
- 534.405 Restrictions on premium pay and compensatory time.

### Subpart E—Pay for Senior-Level and Scientific and Professional Positions

- 534.501 Coverage.
- 534.502 Pay range.
- 534.503 Pay setting.
- 534.504 Annual adjustment in pay.
- 534.505 Pay related matters.
- 534.506 Conversion provisions.

AUTHORITY: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

### Subpart A [Reserved]

### Subpart B—Student-Employees in Government Hospitals

SOURCE: 44 FR 54693, Sept. 21, 1979, unless otherwise noted.

#### § 534.201 General.

Under subchapter V of chapter 53 of title 5, United States Code (U.S.C. 5351–5356), agencies may pay stipends and provide certain services to certain student-employees assigned or attached to hospitals, clinics, or medical or dental laboratories operated by agencies. Student-employees covered under the program are excluded from certain provisions of law relating to classification, General Schedule pay, premium pay, leave, and hours of duty. This subpart authorizes the coverage of certain positions under this program and establishes maximum stipends for student-employees in the program.

#### § 534.202 Coverage.

In addition to the student-employees specified in 5 U.S.C. 5351(2)(A), the following student-employees are covered under this program, provided they are assigned or attached principally for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency:

(1) Any student-employee whom an agency finds is properly covered under this program, provided that the student-employee is a registered student at an accredited academic institution and that the assignment or attachment for training purposes to the hospital, clinic, or medical or dental laboratory is a part of a medical or dental training program accredited by an appropriate accrediting body;

(2) Any student-employee whom an agency finds is properly covered under this program, provided that the student-employee, during the period of assignment or attachment to the hospital, clinic, or medical or dental laboratory, will receive experience or training that is required to obtain a certificate or license in a medical or dental field; or

(3) Any student-employee not otherwise covered under this program whom the Office of Personnel Management approves for coverage as a student-employee under this program.

#### § 534.203 Maximum stipends.

(a) Except as authorized under paragraph (b) or (c) of this section, stipends are to be set by the agency, subject to

the maximum stipends prescribed in the following table:

**Maximum Stipends Prescribed**

Code symbol	Academic level of approved training program	Maximums by grade and step <sup>1</sup>
L–A	Below high school graduation	GS–1–1 (minus 3 steps).
L–1	First year college undergraduate	GS–2–1 (minus 3 steps).
L–2	Second year college undergraduate	GS–3–1 (minus 3 steps).
L–3	Third year college undergraduate	GS–3–3 (minus 3 steps).
L–4	Fourth year college undergraduate	GS–4–2 (minus 3 steps).
L–5	First year postgraduate predoctoral	GS–5–1 (minus 3 steps).
L–6	Second year postgraduate predoctoral	GS–7–1 (minus 3 steps).
L–6	Third year medical school	GS–7–1 (minus 3 steps).
L–7	Third year postgraduate predoctoral	GS–9–1 (minus 3 steps).
L–7	Fourth year medical school	GS–9–1 (minus 3 steps).
L–8	Fourth year postgraduate predoctoral	GS–10–1 (minus 3 steps).
L–8	Medical or dental internship	GS–10–1 (minus 3 steps).
L–9	Fifth year postgraduate w/o doctorate	GS–11–1 (minus 3 steps).
L–9	First year postgraduate (Ph. D.)	GS–11–1 (minus 3 steps).
L–9	First year medical or dental residency	GS–11–1 (minus 3 steps).
L–10	Second year postdoctoral (Ph. D.)	GS–12–1 (minus 3 steps).
L–10	Second year medical or dental residency	GS–12–1 (minus 3 steps).
L–11	Third year medical or dental residency	GS–12–4 (minus 3 steps).
L–12	Fourth year medical or dental residency	GS–13–1 (minus 3 steps).
L–13	Fifth year medical residency	GS–14–1 (minus 3 steps).

<sup>1</sup>The maximum money amount in each case is derived by subtracting from the statutory salary for the appropriate grade a sum equivalent to three step increments of that grade. This amount includes overtime pay, maintenance allowances, and other payments in money or kind.

(b) An agency may pay a student-employee a stipend in excess of the amount prescribed under paragraph (a) of this section only if the Office of Personnel Management has determined that a higher maximum stipend is warranted for the student-employee.

(c) Maximum stipends for positions in the Public Health Service in which duty requires intimate contact with persons afflicted with leprosy are increased above the rates prescribed in paragraph (a) of this section to the same extent that additional pay is provided by Public Health Service Regulations (42 CFR 22.1) for employees subject to the General Schedule (part 531 of this chapter).

(d) Overtime pay, maintenance allowances, and other payments in money or kind for a student-employee must be considered as part of the student-employee's stipend for the purposes of this section, and therefore, may not be used to cause the stipend to exceed the maximum stipend established under this section.

(e) A trainee at a non-Federal hospital, clinic, or medical or dental laboratory who is assigned to a Federal hospital, clinic, or medical or dental laboratory as an affiliate for a part of

his or her training may not receive a stipend from the Federal agency other than any maintenance allowance that is provided.

**§ 534.204 Previous authorizations.**

The provisions of this subpart do not terminate any authorization approved by the Civil Service Commission or the Office of Personnel Management before February 15, 1979, and such authorizations remain in effect until modified or terminated by an agency or the Office of Personnel Management in accordance with the provisions of this subpart.

**Subpart C [Reserved]**

**Subpart D—Pay and Performance Awards Under the Senior Executive Service**

SOURCE: 54 FR 2987, Jan. 23, 1989, unless otherwise noted.

**§ 534.401 Definitions and setting individual basic pay.**

(a) *Definitions.* In this subpart—

*Agency* means an executive agency or military department, as defined by 5 U.S.C. 105 and 102.

*ES rate* means one of the five or more rates of basic pay established by the President under 5 U.S.C. 5382 for the Senior Executive Service.

*Senior executive* means a member of the Senior Executive Service (SES).

(b) *Setting pay upon initial appointment.* (1) An appointing authority may set the rate of pay of an individual at any ES rate upon initial appointment to the SES except under the conditions described in paragraph (b)(2) of this section.

(2) Subject to paragraph (b)(4) of this section, if an individual who receives an initial career appointment in the SES—

(i) Has at least 5 years of current continuous service in one or more positions in the competitive service and is appointed without any break in service, the initial rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the appointment.

(ii) Holds a position that is converted from the competitive service to a career reserved position in the SES and as of the conversion date the individual has at least 5 years of current continuous service in one or more positions in the competitive service, the initial rate of pay may not be less than the rate of basic pay last payable to that individual immediately before the conversion of the position.

(3) For the purpose of paragraph (b)(2) of this section, *rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee entitled to grade or pay retention, the employee's retained rate of pay, before any deductions and exclusive of additional pay of any other kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

(4) If pay setting is subject to paragraph (b)(2) of this section and the rate of basic pay in the individual's current position exceeds the maximum ES

rate, then the initial rate of pay shall be set at the maximum ES rate.

(c) *Adjusting pay while in the SES.* (1) The pay of a senior executive may not be adjusted by an agency more than once in any 12-month period. A pay adjustment includes:

(i) The assignment of an ES rate upon initial appointment to the SES;

(ii) The change from one ES rate to another while employed in the SES; or

(iii) The assignment of an ES rate upon reappointment to the SES following a break in SES service if the new ES rate is different from the executive's former rate or if the break in service exceeds 12 months.

(2) An appointing authority may raise the pay for a senior executive any number of ES rates at the time of an adjustment.

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of an adjustment. Restrictions on reducing pay of career senior executives are in paragraph (f) of this section.

(d) *Setting pay upon transfer.* An appointing authority may set the pay of a senior executive transferring from another agency at any ES rate. If the pay is set at the same rate the executive had in his or her former agency, the action is not considered a pay adjustment for purposes of paragraph (c) of this section.

(e) *Setting pay following a break in SES service.* (1) General.

(i) An appointing authority may set the pay of a former senior executive at any ES rate upon reappointment to the SES if:

(A) There has been a break in SES service of more than 30 days;

(B) There has been a break in SES service of 30 days or less, but the executive's last ES pay adjustment was more than 12 months earlier; or

(C) The reappointment is in a different agency.

(ii) Otherwise, pay must be set at the executive's former ES rate and may not be adjusted until 12 months from the last SES pay adjustment, in accordance with paragraph (c) of this section.

(2) Reinstatement from a Presidential appointment requiring Senate confirmation. These provisions apply

to a former career senior executive who is reinstated under 5 CFR 317.703.

(i) If the individual elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, only if 12 months have elapsed since the last SES pay adjustment; and the adjustment must be in accordance with paragraph (c) of this section.

(ii) If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing pay of career senior executives.*

(1) The ES rate of a career senior executive may be reduced involuntarily in the appointee's agency or upon a transfer of function to another agency only:

(i) For performance reasons, i.e., the executive has received a less than fully successful performance rating under 5 CFR part 430, subpart C, or has been conditionally recertified or not recertified under 5 CFR 317.504; or

(ii) As a disciplinary action resulting from conduct related activity, e.g., misconduct, neglect of duty, or malfeasance.

(2) If the pay reduction is for performance reasons, the agency shall provide the executive at least 15 days' advance written notice.

(3) If the pay reduction is for disciplinary reasons, the agency shall:

(i) Provide the executive at least 30 days' advance written notice;

(ii) Provide a reasonable time, but not less than 7 days, for the executive to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(iii) Allow the executive to be represented by an attorney or other representative; and

(iv) Provide the executive a written decision and specific reasons therefor at the earliest practicable date.

[54 FR 2987, Jan. 23, 1989, as amended at 58 FR 58261, Nov. 1, 1993; 60 FR 6389, Feb. 2, 1995; 61 FR 3542, Feb. 1, 1996]

**§ 534.402 Aggregate compensation.**

Senior executives are subject to the aggregate compensation limitations in subpart B of part 530 of this chapter.

[56 FR 18662, Apr. 23, 1991]

**§ 534.403 Performance awards.**

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the individual must have been an SES career appointee as of the end of the performance appraisal period; and the individual's most recent performance rating of record under part 430, subpart C, of this chapter for the appraisal period must have been "Fully Successful" or higher.

(2) Individuals eligible for a performance award include:

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the salary of the individual is above the ES-6 pay rate, the ES-6 rate is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

(ii) A reemployed annuitant with an SES career appointment.

(iii) An SES career appointee who is on detail. If the detail is to another agency, eligibility is in the individual's official employing agency, i.e., the agency from which detailed. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any award, as agreed upon by the two agencies; but the reimbursement does not affect the award pool for either agency as calculated under paragraph (b) or this section.

(3) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on

performance appraisals of career appointees because there exists an insufficient number of career appointees.

(4) The agency head must consider the recommendations of the Performance Review Board (PRB), but the agency head has the final authority as to who is to receive a performance award and the amount of the award.

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Three percent of the aggregate career SES basic pay as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Fifteen percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period. The rate of basic pay does not include locality-based comparability payments under 5 U.S.C. 5304 and 5 CFR part 531, subpart F, or special law enforcement adjustments under section 404 of the Federal Employees Pay Comparability Act of 1990 and 5 CFR part 531, subpart C.

(d) OPM shall issue guidance concerning the distribution of performance awards within an agency.

(e) Agencies shall submit their distribution of performance awards, the total amount of awards, and the aggregate payroll or average rate of basic pay as computed under paragraph (b) of this section to OPM no later than 14 days after the date the performance awards are approved by the agency. If OPM determines that an agency's payments do not meet the requirements of law or regulations, the agency shall take any corrective action directed by OPM.

(f) Performance awards shall be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the Executive Level I ceiling on aggregate compensation during a calendar year under subpart B of part 530 of this chapter. In

that case, any amount in excess of the ceiling shall be paid at the beginning of the following calendar year in accordance with subpart B of part 530 of this chapter. The full performance award, however, is charged against the agency bonus pool under paragraph (b) of this section for the fiscal year in which the initial payment was made.

[52 FR 2, Jan. 2, 1987, as amended at 55 FR 1353, Jan. 16, 1990; 57 FR 10125, Mar. 24, 1992; 60 FR 6389, Feb. 2, 1995]

**§ 534.404 Pay computation for members of the Senior Executive Service.**

(a) Except as provided in paragraph (b), pay for members of the senior executive service shall be computed in accordance with 5 U.S.C. 5504(b).

(b) From the first day of the first pay period beginning on or after January 1, 1984, to derive an hourly rate divide the annual rate by 2,087.

[49 FR 28389, July 12, 1984]

**§ 534.405 Restrictions on premium pay and compensatory time.**

(a) Under 5 U.S.C. 5541(2)(xvi) and 5 CFR 550.101(b)(18), members of the Senior Executive Service (SES) are excluded from premium pay, including overtime pay.

(b) Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as an SES member. SES members are eligible, however, for compensatory time off for religious purposes under 5 U.S.C. 5550a and 5 CFR part 550, subject J.

[60 FR 6390, Feb. 2, 1995]

**Subpart E—Pay for Senior-Level and Scientific and Professional Positions**

SOURCE: 56 FR 18662, Apr. 23, 1991, unless otherwise noted.

**§ 534.501 Coverage.**

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

§ 534.502

5 CFR Ch. I (1–1–98 Edition)

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and under § 317.303 of this chapter remained at grade GS–16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive Service, or Senior Cryptologic Executive Service; or

(3) Positions where pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992]

**§ 534.502 Pay range.**

A pay rate fixed under this subpart shall be—

(a) Not less than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(b) Not greater than the rate of basic pay payable for level IV of the Executive Schedule.

**§ 534.503 Pay setting.**

(a) Each agency with positions subject to this subpart shall establish written procedures for setting the pay of incumbents of the positions in accordance with the provisions of law, OPM regulations, and the Federal Personnel Manual. The head of each agency, or his or her designee, shall set the rate of pay of individuals under this subpart in accordance with the agency's written procedures.

(b) The agency's written procedures shall include—

(1) A description of the structure of the pay system;

(2) The criteria that will be used to assign rates of pay to individual employees;

(3) The 12-month waiting period on pay adjustments, as provided in paragraph (c) of this section;

(4) The designation of the official or officials who will have authority to set pay; and

(5) The management controls that will be applied to assure compliance

with the procedures and a reasonable distribution of pay within the pay range.

(c) Pay of an individual may not be adjusted more than once in any 12-month period.

(1) A pay adjustment includes the assignment of a pay rate upon initial appointment.

(2) An annual adjustment in pay under § 534.504 of this subpart shall not be considered a pay adjustment under this paragraph if it does not exceed the greater of the annual General Schedule adjustment under 5 U.S.C. 5303 or the Executive Schedule adjustment under 5 U.S.C. 5318 effective the same date.

(3) Pay of an SL or ST employee transferring from another agency, or a military department, may be set at any rate. If the pay does not exceed the employee's former rate, the pay action does not start a new 12-month period.

(d) Any reduction in the basic pay of an individual is subject to the provisions of subparts C and D of part 752 of this chapter.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992]

**§ 534.504 Annual adjustment in pay.**

Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of pay under the General Schedule, each rate of pay established under this subchapter shall be adjusted by such amount as the head of the agency considers appropriate, in accordance with the provisions of § 534.503 of this part.

**§ 534.505 Pay related matters.**

(a) *Aggregate compensation.* Limits on aggregate compensation, including basic pay, are in 5 U.S.C. 5307 and part 530, subpart B, of this chapter.

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. 4505a and § 430.504 of this chapter.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992]

**§ 534.506 Conversion provisions.**

(a) This section covers initial conversion to the pay system under 5 U.S.C.

5376 as of the effective date of these regulations.

(b) The rate of basic pay for any individual converting to a pay system under 5 U.S.C. 5376 shall be at least equal to the rate payable to that individual immediately before such conversion, including any interim geographic adjustment authorized by Schedule 9 of Executive Order 12736 of December 12, 1990.

(c) If there is an increase in an individual's rate of basic pay upon conversion, other than to the minimum rate under 5 U.S.C. 5376, the increase must be approved by the head of the agency or his or her designee.

## PART 536—GRADE AND PAY RETENTION

### Subpart A—Definitions; Coverage and Applicability

Sec.

- 536.101 General.
- 536.102 Definitions.
- 536.103 Coverage and applicability of grade retention.
- 536.104 Coverage and applicability of pay retention.
- 536.105 Exclusions.

### Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

- 536.201 Comparison of grades in different pay schedules or pay systems.
- 536.202 Period of grade retention.
- 536.203 Determination of retained grade.
- 536.204 Determination of applicable rate schedule.
- 536.205 Determination of rate of basic pay.
- 536.206 Criteria for a "reasonable offer."
- 536.207 Loss of eligibility for grade retention.
- 536.208 Termination of grade retention.
- 536.209 Loss of eligibility for, or termination of, pay retention.

### Subpart C—Miscellaneous Provisions

- 536.301 Placement and classification plans.
- 536.302 Appeal of termination of benefits because of reasonable offer.
- 536.303 Documentation.
- 536.304 Issuance of employee letters.
- 536.305-536.306 [Reserved]
- 536.307 Availability of information.
- 536.308 Applicability of retained grade.

AUTHORITY: 5 U.S.C. 5361-5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), 104 Stat. 1338-336; sec.

4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), 107 Stat. 981;

§536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

SOURCE: 45 FR 85656, Dec. 30, 1980, unless otherwise noted.

## Subpart A—Definitions; Coverage and Applicability

### § 536.101 General.

(a) Title VIII of Public Law 95-454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361-5366, and section 801(b) of Public Law 95-454, and must be read together with those sections of law.

### § 536.102 Definitions.

For the purposes of this part:

*Demotion at an employee's request* means a reduction in grade:

(1) Which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and

(2) Which is not caused or influenced by a management action.

*Demotion for personal cause* means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.